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PREFACE.

This issue of the Bulletin is devoted exclusively to opinions in cases arising under the workmen's compensation act, decided by The Industrial Commission of Ohio and its predecessor, the State Liability Board of Awards.

The elective workmen's compensation act of 1911 (102 O. L., 527) was administered by a board of three members, known as the State Liability Board of Awards. The compulsory workmen's compensation act of 1913 (103 O. L., 72) was in effect an amendment to the act of 1911, and by its terms left the administration of the act with the State Liability Board of Awards, but the act passed at the same session of the General Assembly creating The Industrial Commission of Ohio (103 O. L., 95) abolished the State Liability Board of Awards and conferred the jurisdiction which it had theretofore exercised upon The Industrial Commission of Ohio, the former board ceasing to exist on September 1, 1913, and the work it had theretofore done being taken up by The Industrial Commission of Ohio on that date.

From March 1, 1912, the date of the actual going into effect of the act of 1911, until November 15, 1914, 64,662 claims were filed for compensation by employes of employers contributing to the state insurance fund, or their dependents, 54,320 of which had been finally disposed of on said last mentioned date, leaving 10,342 still pending. In a large number of the pending claims partial awards have been made, the claims being continued from week to week until such time as the extent of the disability resulting from the injury can be determined and a final award made.

Employes of the state itself and of counties, cities, school districts and townships are protected by the act of 1913, and 653 claims of such employes or their dependents had been filed on November 15, 1914, 356 of which had been finally disposed of.

In addition to the state insurance cases above referred to there were 8,688 claims filed with the Commission under the self-insurance provisions of Section 22 of the act of 1913, 6545 of which were disposed of and 2143 pending for confirmation on the last mentioned date. All of these claims were filed between January 1, 1914, and November 15, 1914.

There were also filed between January 1, 1914, and November 15, 1914, 250 claims under Section 27 of the act of 1913, which provides for a proceeding before the Commission on behalf of employes of employers who are amenable to the provisions of the compensation act who have not complied with its terms. Decisions were made in 166 of these claims and 84 were pending on the last mentioned date.

Obviously it would be impracticable to report the decisions of the Commsision in all of the claims determined by it. However, a finding of facts is made in each claim and the same is made a matter of record.

Inasmuch as questions of negligence, contributory negligence, assumption of risk and the fellow-servant doctrine are not considered in claims made under the compensation act the disposition of a claim is a very simple matter as compared with the adjudication of a claim in a civil action under the old employers' liability laws, and most of the questions which the Commission is required to determine are questions of fact only. Although negligence, contributory negligence, assumption of risk and the fellow-servant doctrine

are not involved in the determination of claims there are many interesting questions constantly coming before the Commission for determination and the compensation law has by no means completely eliminated close and difficult questions, as will be evidenced by reading the reports contained in this bulletin.

The decisions herein reported have been prepared with the idea that they would be helpful to the Commission in deciding claims in the future and of value to employers and employes. Most of the claims reported herein involve questions as to who is an employer, who is an employe, whether an injury was sustained while in the course of employment, questions of dependency, and the degree thereof, etc.

We have had occasion to consult with the Attorney General and members of his staff frequently in reference to legal questions involved in claims before us for determination and we wish to acknowledge the assistance rendered to us in this respect by Hon. Timothy S. Hogan, Attorney General, and by his assistant, Special Counsel James I. Boulger, who has acted as counsel to this Commission since its creation and organization.

WALLACE D. YAPLE,
Chairman.

RE. CLAIM NO. 3.

DAVID BURNS, *Claimant.*

(May 22, 1912.)

1. The purpose of the Workmen's Compensation Act being to compensate an injured employe for the impairment of his earning capacity, and not to compensate him for pain, suffering, etc., a workman who receives an injury in the course of his employment resulting in temporary disability and who enters other employment before he has fully recovered at a wage equal to or greater than he was receiving at the time of his injury, is not entitled to compensation after engaging in such latter employment, even though he was not at that time able to resume the employment in which he was engaged at the time of his injury.

2. The amount allowed for medical and hospital services will in no case exceed such as is ordinarily charged and paid for similar services in the community where rendered.

3. No allowance for nursing services will be made where such services were rendered by a member of the family of the applicant who rendered such services in connection with her duties as housekeeper.

STATEMENT OF FACTS.

The applicant, David Burns, was on the 21st day of March, 1912, an employe of Leonard, Crossett & Riley of Cincinnati, Ohio, a partnership, and a subscriber to the state insurance fund, being Risk No. 39, Class 13, Sub. Class 154.

On said 21st day of March, 1912, the applicant was injured while in the course of employment by having his foot caught in a cleat of a car door and being thrown violently to the ground, thereby spraining his ankle and the ligaments thereof. Said injury was of a temporary character but sufficient to prevent the applicant from resuming his usual employment for four weeks. On April 8, 1912, the applicant entered upon his duties as ward assessor of one of the wards of the City of Cincinnati, to which position he had been elected at the general election held in November, 1911. His weekly wage at the time of his injury was $12. As such assessor on and after the 8th day of April, 1912, he received a per diem compensation of $3.00. During applicant's injury he received medical attention from Dr. Paul DeCourcy for which services said physician has rendered a statement for $25.00, which the applicant asks to be paid along with a bill for $4.00 for medicines and $33.00 for nursing services rendered by Kate Burns, a sister of the applicant, who at the time of the injury and for many years prior thereto, was a housekeeper for the applicant and engaged in no other gainful occupation. Applicant claims compensation to April 22, 1912, at which time he claims to have recovered so as to be able to resume the work he was doing at the time of his injury, although he did not resume such work because of his duties as assessor.

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur.)

The applicant received his injury on March 21, 1912. He claims to have recovered on April 22, 1912, so as to be able to resume his employment. But on April 8, 1912, he entered upon his duties as ward assessor at a greater compensation than he was receiving from his employer at the time of his injury.

The question to be determined is as to whether the applicant, considering that his injury was such as to prevent him from engaging in his usual work until April 22nd, should be allowed compensation for any portion of the period between April 8th and April 22nd.

Section 1465-65, General Code, (Sec. 26 of the Workmen's Compensation Act of 1911, 102 O. L., 524) provides:

> "In case of temporary or partial disability, the employe shall receive sixty-six and two-thirds per cent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week; if the employe's wages were less than five dollars per week, then he shall receive his full wages; but not to continue for more than six years from the date of the injury, nor to exceed three thousand four hundred dollars in amount from that injury".

From the provisions of this section it is evident that the act seeks to compensate the injured employe to the extent of two-thirds of the loss of his earning capacity during the period of disability resulting from the injury providing it does not continue for a longer period than six years and does not exceed $3,400 in amount. But there must have been an actual loss sustained, so that if the injured employe was able to engage in other employment, and did so engage, that fact should be taken into consideration. The act does not contemplate that any compensation be made simply on account of the injury or on account of pain, suffering, etc. It seeks to reimburse the injured employe to the extent of two-thirds of the financial loss he has sustained, exclusive of the first week of the injury, within the limitations above mentioned. In the claim under consideration there was no financial loss as a result of the injury except from the date thereof to April 8, 1912, and compensation should be awarded accordingly.

Another question is presented by the claim made by the applicant for medical attention and nursing.

Section 1465-62, General Code, (Sec. 23 of the Workmen's Compensation Act of 1911, 102 O. L., 524) provides:

> "The board shall disburse and pay from the fund, for such injury, to such employes, such amounts for medical, nurse and hospital services and medicines, as it may deem proper, not, however, in any case to exceed the sum of two hundred dollars in addition to such award to such employe".

Under this section it is the duty of the Board to pay from the state insurance fund such amounts as it may deem proper, not exceeding the sum of Two Hundred Dollars in addition to the award authorized to be made on account of the impairment of the earning capacity. It is evident that the law intends that proper medical attention shall be rendered to injured workmen, and in such cases as such services may be necessary to pay for nursing and hospital services, and that such amount shall be paid for such services as may be reasonable. The mere fact that some services were rendered and that claim is made for a certain amount does not obligate the Board to pay the exact amount claimed. In our opinion such amounts should be paid under authority of this section as are ordinarily charged for such services in the locality where the services are rendered, having regard to the station in life of the applicant and the fact that the amount allowed by the Board will be paid promptly and

that no losses will result to the persons rendering such services on account of non-payment; provided, of course, the services are necessary and proper. The amount claimed for medical attention and services being $25.00 and the reasonable value of the same being in the judgment of the Board not more than $10.00, that amount will be allowed and no more.

The nursing of the applicant being done by his sister, who for many years had been his housekeeper, the claim for $33.00 for such nursing is disallowed, as we do not deem it a proper claim for allowance, although the services may have been rendered. We do not think that the section above quoted contemplated compensation to a member of the workman's family for such services, especially under such circumstances as are shown to exist in the present claim where the person rendering the services was not a professional nurse and was not at the time of rendering the services engaged in any occupation necessitating her losing time or wages on account of such services.

RE. CLAIM NO. 41.

LAURA M. SHAFFER ET AL., *Claimants.*

(June 14, 1912.)

An employe was killed in the course of his employment leaving surviving him a widow and minor child, aged 20 months, a widowed mother and two sisters, aged 23 and 9 years respectively. Some months prior to his death he deserted his wife and child, without any fault on the part of his wife, since which time he had contributed nothing toward their support. He had never contributed anything toward the support of his mother or either of his sisters.

HELD: 1. That his minor child was wholly dependent upon him for support;

That his widow was wholly dependent upon him for support;

That his widowed mother was neither wholly or partially dependent upon him for support;

That his sisters were neither wholly or partially dependent upon him for support.

2. It is not necessary for the application for compensation to be filed by the administrator or executor of the deceased.

3. His minor child being under the disability of infancy and in the custody of her mother, that part of the compensation apportioned to her will be made payable to the mother for the use of the child. (G. C. 1465-68).

STATEMENT OF FACTS.

On May 7, 1912, Harry E. Shaffer was in the employ of The Paulding Cement Products Co. of Paulding, Ohio, which concern was at the time a subscriber to the state insurance fund, being Class 21, Sub. Class 6 and Risk No. 111.

On said 7th day of May, 1912, while in the course of his employment said Harry E. Shaffer received an injury from the effects of which he died almost instantly. The decedent left surviving him Laura M. Shaffer, his widow, residing at 3133 Imperial Street, Cincinnati, and Harriet E. Shaffer, a daughter, aged 20 months, residing with her mother; also Emma Shaffer, his widowed mother, and two sisters, Vernice, aged 23, and Janet, aged 9, of Lynchburg, Ohio, all of whom are applicants for compensation on the theory that they were dependent upon the decedent for support, the widow filing an application on behalf of herself and minor child, and the mother on behalf of herself and her two daughters.

It appears from the proof on file that Harry E. Shaffer and Laura E. Shaffer were married on the 5th day of June, 1910, in Cincinnati, and that the child Harriet was born as a result of the marriage; that the decedent con-

tributed nothing to the support of his wife or child until compelled to do so by proceedings instituted by the Humane Society in the Police Court of Cincinnati, after which he worked and supported his wife and child until July 23, 1911, when he deserted them and thereafter contributed but $4.00 to their support in the whole time intervening between July 23, 1911, and the day of his death, May 7, 1912. The facts do not disclose that he had ever contributed anything to the support of his mother or his two sisters. On the contrary, it appears that he was indebted to his mother for money she had furnished him for his own support.

The injury which resulted in his death was sustained while he was attempting to put a belt on a pulley by reaching up to a shaft while the engine to which the belt was attached was running.

The decedent died intestate and it does not appear that any administrator has been appointed.

Mr. E. Scott King for Claimants, Laura E. Shaffer and Harriet E. Shaffer.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur.)

In this claim all the jurisdictional facts authorizing an award clearly appear, the only question being as to who is entitled to the award and whether it can be paid directly to the beneficiary without the intervention of the executor or administrator of the decedent. First we must determine whether any or all of the several applicants for compensation are "dependents" within the meaning of the act, and if so, whether they are wholly or partially dependent.

General Code, Section 1465-67 (Sec. 28 of the Workmen's Compensation Act of 1911, 102 O. L., 524) is as follows:

> "In case the injury causes death within the period of two years the benefits shall be in the amounts and to the persons following:
>
> 1. If there be no dependents, the disbursements from the insurance fund shall be limited to the expense provided for in sections 23 and 24.
>
> 2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wage and to continue for the remainder of the period between the date of the death and six years after the date of the injury, and not to amount to more than a maximum of thirty-four hundred dollars, nor less than a minimum of one thousand and five hundred dollars.
>
> 3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wage and to continue for all or such portion of the period of six years after the date of the injury, as the board in each case may determine, and not to amount to more than a maximum of thirty-four hundred dollars."

It will be observed that there is no attempt made to define or qualify the word "dependent" either in this section or elsewhere in the act, and therefore it is to be presumed that the law-making power in making use of the word intended that it should be given its ordinary and accepted meaning, and such meaning should be given it unless by applying the familiar rule of statutory

construction that statutes in *pari materia* should be construed together, the general and accepted meaning should be qualified. Webster defines "dependent" as "*one who depends; one who is sustained by another, or who relies upon another for support or favor.*"—Webster's New International Dictionary, p. 598.

It is proper to survey the whole field of legislation on the subject in order to arrive at a proper understanding of what was in the legislative mind at the time of the enactment of a statute. In the language of Blackstone, "There are three points to be considered in the construction of all remedial statutes—the old law, the mischief and the remedy". (Cited in *Tracy vs. Card, 2* O. S. 431, 441.)

At common law no right of action existed in favor of any person on account of the death of a human being caused by the wrongful act or default of another. It is only by virtue of legislative enactment that any right of action or claim for compensation exists in favor of any person on account of such death, and in examining the legislation on the subject it is well to observe the rule of statutory construction observed by the courts, heretofore alluded to, which was expressed in the following language by Williams, C. J., in *Cincinnati vs. Connor,* 55 O. S., 82, 89:

> "It is an equally well established rule, that the provisions of a statute are to be construed in connection with all laws in *pari materia,* and especially with reference to the system of legislation of which they form a part, and so that all the provisions made, if possible, have operation according to their plain import. It is to be presumed that a code of statutes relating to one subject, was governed by one spirit and policy, and intended to be consistent and harmonious in its several parts. And where, in a code or system of laws relating to a particular subject, a general policy is plainly declared, special provisions should, when possible, be given a construction which will bring them in harmony with that policy. And it is only when, after applying these rules in the endeavor to harmonize the general and particular provisions of a statute, the repugnancy of the former to the latter is clearly manifest, that the intention of the legislation as declared in the general language of the statute is superseded."

Until March 25, 1851, no right of action existed in Ohio against any one for wrongfully causing the death of a human being. On that date the General Assembly passed an act entitled, "An Act requiring compensation for causing death by wrongful act, neglect, or default," which was as follows:

> SECTION 1. "Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages, in respect thereof; then, and in every such case, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to murder in the first or second degree, or manslaughter."
>
> SECTION 2. "Every such action shall be brought by and in the name of the personal representative of the deceased person, and the amount recovered in every such action shall be for the exclusive

benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportions provided by law in relation to the distribution of personal estates left by persons dying intestate; and in every such action, the jury may give such damages as they shall deem fair and just, not exceeding five thousand dollars, with reference to the pecuniary injury resulting from such death to the wife and next of kin to such deceased person. Provided, that every such action shall be commenced within two years from the death of such deceased person".

Sections 1 & 2, S. & C. 1139-40; Swan's Revised Statutes, 707 & 708.

It will be noted that the provisions of these two sections are general, in that they not only apply to actions between employer and employe, but to all actions in which it is sought to recover damages on account of the death of an individual. It will be further observed that the death must be occasioned by "wrongful act, neglect, or default", and further that such "wrongful act, neglect, or default" must be such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof; that every such action must be brought in the name of the *personal representative* of the deceased person; that the amount recovered shall be for the exclusive benefit of the *widow and next of kin* of such deceased person; that such sum shall be distributed to such widow and next of kin in the proportions provided by law in relation to the distribution of the personal estate left by persons dying intestate; that the amount recoverable as damages shall be such as the jury shall deem fair and just, not exceeding $5,000, with reference to the *pecuniary injury* resulting from such death to the *wife* and *next of kin* of such deceased person.

The above quoted sections have been amended from time to time, the general effect of the amendments being to increase the liability of the defendant in such actions. Said sections, upon the revision of the statutes, became Sections 6134 and 6235 Revised Statutes, and now appear as General Code, Sections 10770 and 10772, as follows:

Sec. 10770. "When the death of a person is caused by wrongful act, neglect or default such as would have entitled the party injured to maintain an action and recover damages in respect thereof, if death had not ensued, the corporation which, or the person who would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances which make it in law murder in the first or second degree, or manslaughter. When the action is against such administrator or executor the damages recovered shall be a valid claim against the estate of such deceased person.

When death is caused by a wrongful act, neglect or default in another state, territory or foreign country, for which a right to maintain an action and recover damages in respect thereof is given by a statute of such other state, territory, or foreign country, such right of action may be enforced in this state, in all cases where such other state, territory or foreign country allows the enforcement in its courts of the statute of this state of a like character; but in no case shall the damages exceed the amount authorized to be recovered for a wrongful act,

neglect or default in this state, causing death. Every such action brought under this act shall be commenced within the time prescribed for the commencement of such action by the statute of such other state, territory or foreign country."

SEC. 10772. "Such action shall be for the exclusive benefit of the wife, or husband, and children, or if there be neither of them, then of the parents and next of kin of the person whose death was so caused; it must be brought in the name of the personal representative of the deceased person; and where it shall appear that any such action is for the benefit of children, widow, widower, mother, father, brother or sister, the jury may give such damages, not exceeding in any case ten thousand dollars, and where it shall appear that any such action is for the benefit of a widow and one or more minor children the jury may give such damages, not exceeding in any case twelve thousand dollars, as the jury may think proportioned to the pecuniary injury resulting from such death, to the persons, respectively for whose benefit the action was brought. Every such action must be commenced within two years after the death of such deceased person, except as provided in section 10773-2. Such personal representative, if he was appointed in this state, with the consent of the court making such appointment may at any time, before or after the commencement of a suit, settle with the defendant the amount to be paid. The amount received by such personal representative, whether by settlement, or otherwise, shall be apportioned among the beneficiaries, unless adjusted between themselves, by the court making the appointment, in such manner as shall be fair and equitable, having reference to the age and condition of such beneficiaries and the laws of descent and distribution of personal estates left by persons dying intestate."

It will be observed that the right of action conferred by the original statute of 1851 is the same as that conferred by the statute as it now stands, but the amount recoverable has been increased from five thousand to twelve thousand dollars, and the persons for whose exclusive benefit such action is authorized are now designated as *"the wife, or husband, and children,* or if there be neither of them, then of the parents and next of kin of the person whose death was so caused"; further that a maximum sum of twelve thousand dollars may be recovered where the action is for the benefit of a *widow and one or more minor children,* but not more than a maximum of ten thousand dollars where the action is for the benefit of "children, widow, widower, mother, father, brother or sister", the amount of damages in each instance to be proportioned to the "pecuniary injury resulting from such death, to the persons, respectively for whose benefit the action was brought".

These sections have been frequently construed by the courts and in the case of *Lyons vs. R. R., 7 O. S. 337,* it was held that an action might be maintained for the benefit of the next of kin of the deceased, although he left no widow or children and although the petition did not contain a statement of special circumstances rendering the death a pecuniary injury to them, as such circumstances did not at all affect the *right* of recovery, but only the *amount* thereof.

In *Muhl vs. The Michigan & Southern R. R. Co., 10 O. S. 272,* it was held that where the deceased was a woman and left a son surviving her the question of the legitimacy or illegitimacy of the son could not affect the right of action in his behalf.

In *Grotenkemper vs. Harris, 25 O. S. 510,* it was held that persons having

no legal claim for support upon the deceased might, as next of kin, have an action maintained for their benefit to recover the compensation allowed by the statute, and that in determining the amount of damages, the reasonable expectation of what the next of kin might have received from the deceased, had he lived, was a proper subject for the consideration of the jury.

In *Steel vs. Kurtz, 28 O. S. 191,* it was held that a surviving husband was "next of kin" within the meaning of the statute where the deceased was a woman who died intestate leaving a husband but no children or their legal representative. It was further held in this case that no damages could be given on account of bereavement, mental suffering or as a solace on account of such death.

In *Doyle vs. The Baltimore & Ohio R. R. Co., 81 O. S. 184,* it was held that where certain beneficiaries defined by the statute were living at the time of the death of the deceased and at the time of the beginning of the action, but died during the pendency of the action, leaving none of the class mentioned in the statute surviving, that the action should abate.

In the act of 1851 the General Assembly, in creating this right of action unknown to the common law, evidently had in mind the placing of some money value upon a human life and impressing the same with the nature of personal property belonging to the estate of the deceased. This is evident from the provisions of the statute providing that the action could only be brought by the personal representative; that it should be for the benefit of the widow and next of kin; and, that the sum recovered should be distributed in accordance with the law in relation to the distribution of personal estates left by persons dying intestate. As subsequently amended from time to time and as it stands today, the amount recovered partakes less of the nature of the personal estate of the deceased, although it is still necessary for the action to be maintained by his personal representative. The amount recovered is now directed to be apportioned among the several beneficiaries "in such manner as shall be fair and equitable, having reference to the age and condition of such beneficiaries and the laws of descent and distribution of personal estates left by persons dying intestate", so that while the laws of descent and distribution are still used as a guide, as a matter of practice it is a well known fact that the provisions of the statute directing that the apportionment shall be "fair and equitable" and shall have reference to the "age and condition of such beneficiaries" are the governing provisions of the statute.

In comparing the statute under consideration with the statutes giving a right of action for wrongful death certain facts must be kept in mind. The first statutes attempting to give compensation for wrongful death provided that such compensation should assume the form of "damages" to be recovered by civil action in the courts. As has already been shown, the damages so recovered were so far impressed with the nature of the personal estate of a decedent dying intestate as to require the action to be brought by the personal representative of the decedent and distribution to be made in accordance with the statute governing descent and distribution of personal property, the only difference between the distribution of such damages and the distribution of such personal estate being that the damages recovered in such action could not be taken for the debts of the decedent. But as Sections 10770 and 10772, General Code now stand, a disposition is shown on the part of the legislative power to depart from the original theory of distribution as contained in the first statute enacted and in the distribution of the damages to consider the "age and condition of the beneficiaries" rather than the laws governing the distribution of personal estates. Nowhere in any of the statutes conferring the right of civil action for damages for such death does it appear

that the right to recover shall be limited to cases wherein the deceased left *dependents*, although the action is to be maintained for such classes of persons as usually sustain that relation to the deceased. But the recovery is had on account of the relationship existing, and the question of dependency in no way enters into the case, except as it may affect the amount of damages.

The statute under consideration discloses a radical departure not only from the common law but from the provisions of the statutes giving a right of action for wrongful death. The considerations which induced the General Assembly to make this radical departure are well known. Our system of dealing with personal injuries incurred in industrial pursuits and the awarding of damages for death by wrongful act was until the enactment of the statute under consideration based entirely upon fault or negligence. In the practical operation of the laws governing such actions it was found that only a small percentage of those killed and injured could recover, especially when the rules of contributory negligence, assumption of risk and the fellow servant doctrine were applied in favor of the defendants, and the few who could recover usually did so only after long years of litigation in the courts, and then a large portion of the amount recovered usually went to cover the costs and expenses incident to the litigation. So that even in the cases where recoveries were had, such portion of the "damages" as reached the injured or the next of kin of the deceased was available only after long and bitter strife with the employer, and frequently long after the time had passed when the injured person himself or the next of kin, in case of his decease, could be really benefited in a substantial way.

A graphic illustration of the delay frequently occurring in such actions is given in the case of *Doyle vs. R. R. Co. supra*, in which case the decedent, John H. Doyle, an engineer in the employ of the Baltimore & Ohio R. R. Co., was killed in a collision on the 8th day of November, 1888; his widow, Mary Doyle, was appointed administratrix of his estate and on April 12, 1890, brought suit against the Railroad Company in the Common Pleas Court of Franklin County. The case reached the Supreme Court twice and was finally decided by that tribunal on November 30, 1909, 21 years and 22 days after the death of the decedent and long after the death of his widow.

But in most cases of injury and death by industrial accident a recovery of damages by civil action could be defeated by the interposition of one or the other of the defenses of "contributory negligence", "assumption of risk" or the "fellow servant rule", so that many of the victims and their dependents in case death ensued, become objects of public or private charity. In some instances meritorious claims were lost through the "wearing out" process of tedious, time consuming and expensive litigation, through the mistakes—and sometimes the incompetency—of counsel, the erroneous charges of trial judges, the misconduct of juries and so on, the plaintiff often learning after months or years of waiting that he had lost for some reason which he could not understand, his inference being that he had lost on a "technicality". Then, too, it not infrequently happened that employers were compelled to pay outrageous amounts as damages for trivial injuries, or grossly excessive amounts in cases of death or more serious injury. The courts, especially in the industrial centers, were clogged with personal injury actions, for doubt as to whether there was a liability existed in nearly every case of injury; and even when the liability was clear the law did not undertake to specify the amount to which the plaintiff was entitled, but only prescribed rules by which a jury, under the instructions of the trial judge, might arrive at the correct amount. The result was that bad feeling between employer and employe was engendered, valuable time of both was lost in litigation and more money was

expended by employers in the defense of suits and in the payment of insurance premiums for partial protection than was paid to injured employes on account of injuries and death. The courts were being criticized for conditions which it was not their province to remedy. Discontent over the apparent wrongs of the system was becoming prevalent among the toilers, to the disadvantage of all classes of society except the demagogue who availed himself of its presence to further his selfish aims.

As said by Judge Johnson in *State ex rel Yaple vs. Creamer, 85 O. S. 349*, in commenting upon the investigation and research into industrial conditions by the commission appointed by the Governor preceding the enactment of the statute under consideration:

> "Substantially its conclusions are, that the system which has been followed in this country, of dealing with accidents in industrial pursuits, is wholly unsound, that there is an independent and widespread sentiment which calls for its modification and improvement, and that the general welfare requires it. That there has been enormous waste under the present system, and that the action for personal injury by employe against employer no longer furnishes a real and practical remedy, annoys and harasses both, and does not meet the economic and social problem which has resulted from our modern industrialism".

In enacting the workmen's compensation act the General Assembly sought to abandon the old method of recovering damages for personal injury and death on account of negligence and to substitute in lieu thereof a system of compensation based only upon the fact of injury, the nature and extent thereof, and the resulting impairment of the earning capacity, and giving to the dependents—not next of kin—of a killed employe, certain definite compensation based upon the degree of dependency and the earning power of the decedent while living. It seeks to give a certain compensation for every injury not purposely self-inflicted and for every death where there are dependents, regardless of the question of negligence, and provides a system by which such compensation may be readily available without delay and with inconsiderable expense and with little formality. The old method still continues as to such employes as do not voluntarily elect to operate under the compensation act, but as to those who do so elect and do observe laws designed for the safety of the persons in their employ, the old laws do not apply and the new method is exclusive.

Our conclusion is that there is no such relation between the act under consideration and former employers' liability acts, especially the sections of the statutes herein referred to, that would warrant a construction of the former at variance with its plain and unambiguous language. It seems to us that the fact that the General Assembly, in enacting Sections 10770 and 10772 of the General Code, made the damages recoverable in an action brought because of wrongful death accrue to the benefit of persons bearing certain relations therein described, and in the compensation act provided that compensation in case of death should be paid to "dependent persons at the time of the death", is convincing that a departure from the old method was intended, and instead of providing a possible fund indefinite in amount for distribution in accordance with the laws governing the distribution of the personal estate of an intestate, that a definite and certain amount was to be provided and promptly paid to such persons as might at the time of the death of the deceased be dependent upon him for support, and this regardless of the relation that might exist between the decedent and the beneficiaries.

It seems, therefore, that the word "dependent" is not in any way qualified by the provisions of General Code, Sections 10770 and 10772, and unless other statutory provisions are found, the word is to be understood in its ordinary and accepted meaning.

The courts of England have had frequent occasion to construe the meaning of the word "dependent" as it occurs in the English workmen's compensation acts. The English act of 1897 defined "dependents" as "such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death".

In the case of *Coulthard vs. Consett Iron Company, Ltd., 8 W. C. C. 87,* decided by the Court of Appeals of England, the applicant for compensation was the widow of a workman and claimed compensation upon the ground that she was wholly dependent upon the earnings of her deceased husband at the time of his death. The applicant had lived with and been maintained by her husband from the time of their marriage in 1882 until June 29, 1904. On that day he left her after a quarrel and went away. From that time he never lived with the applicant or contributed in any way to her maintenance. He was killed by accident on October 19, 1904. During the period of his desertion the applicant maintained herself on what she could earn by casual work. The County Court found that the applicant was dependent upon the earnings of her husband at the time of his death and made an award in her favor. Upon appeal by the employers the decision was affirmed by the Court of Appeals, Collins, M. R., who delivered the opinion, saying:

> "In my opinion all the facts of this case are in favor of the view that this widow was a dependent. In the first place, I think it to be a very important fact, and one which distinguishes this case from the case so much relied on for the employers, that the applicant here was the wife of the workman so that there was no doubt that there was a direct obligation on his part to support her. It is perfectly true that if the wife has means of subsistence upon which she has a right to rely, and upon which she can and does rely and treat as a source of income upon which she can depend, then she can well be said not to be dependent upon her husband in point of fact. * * * I think that the primary obligation of the husband to support his wife makes her a "dependent" unless there are some other means of subsistence upon which she can and does in fact rely in substitution for the legal obligation of her husband to support her".
>
> *Coulthard vs. Consett Iron Co., Ltd.,* 8 W. C. 87-89.

In the case of *Williams vs. Ocean Coal Co., Ltd.,* 9 W. C. C., 44, the facts disclosed were that a husband and wife had been for some considerable time living apart, though they met occasionally. The husband during the time did not contribute toward the support of his wife. There was no evidence that she had ever released him from the legal obligation to do so, though at the time of her husband's death she was supporting herself as a domestic servant. Under such a state of facts, when the husband was killed under such circumstances as to make his employer liable to pay compensation, it was held that the wife was a "dependent", totally dependent upon her husband's earnings at the time of his death, and that the legal presumption that a wife is dependent upon her husband is not rebutted by proof of the fact that he had deserted her or not contributed toward her support; nor by the

fact that she was being supported by friends, or was supporting herself, or dependent upon poor law relief.

Both of the foregoing cases were decided under the act of 1897. In 1906 an act was passed by Parliament (6 Edw. 7 c. 58) entitled, "An Act to consolidate and amend the law with respect to compensation to workmen for injuries suffered in the course of their employment". This act is usuually referred to as "Workmen's Compensation Act of 1906". Under the provisions of this act compensation is provided, where death results from injury, "if the workman leaves any dependents wholly dependent upon his earnings, etc.", and in Section 13 it is provided:

> "In this act, unless the context otherwise requires, * * * 'dependents' means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively. 'Member of a family' means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister."

Although the English act, after providing that compensation should be paid to the dependents of a workman then undertook to define "dependents" (which the Ohio law does not do) the definition of "dependents" as contained in the act has been before the English courts for construction many times.

In the case of *Keeling vs. New Monckton Collieries, Ltd., 4 B. W. C. C. 49,* Alice Keeling was the applicant. She was married to the deceased workman in 1881. Seven years later she left him on account of his cruelty and took her children away with her. Subsequently she got work which enabled her to support herself. There was never any agreement for separation and she had never made any application for maintenance against her husband during his lifetime. The County Court held that there had been no abandonment of her rights by the widow, and awarded her compensation. Upon appeal it was held by the Court of Appeals that as the wife might at any time have made a claim for maintenance against her husband, she was placed in a worse position by his death and was entitled to compensation as in part dependent upon his earnings, Cozens-Hardy, M. R., who announced the decision of the court, saying, with reference to the fact of marriage creating a presumption of dependency:

> "It is not a presumption that cannot be rebutted, but there are some circumstances which certainly are not sufficient to negative or rebut that presumption. The presumption is not rebutted by the mere fact of desertion. It is not rebutted by proof that *de facto* not one penny was being contributed by the husband to the wife's support at the time of his death. It is not rebutted by evidence that the wife was, in fact, being kept alive and maintained by her relations as a matter of charity or kindness. It is not rebutted merely by evidence that the wife is not being supported by her husband, or is maintaining herself by going into domestic service, earning small sums of money

as a charwoman or otherwise. It is not rebutted by proof that she was in the workhouse at the date of his death".

This case, however, was appealed to the House of Lords where the decision of the Court of Appeals was reversed, (*New Monckton Collieries Ltd., vs. Keeling,* 4 B. W. C. C. 332) the House of Lords holding that the fact of marriage of itself created no presumption that the wife was dependent upon her husband, and besides that there was conclusive evidence that the applicant was not dependent at all upon the earnings of her husband at the time of his death.

Lord Atkinson, who delivered the opinion, after stating the facts, said, with reference to such presumption:

> "It certainly would appear to me that this evidence clearly establishes that, apart from the presumption I have mentioned, Alice Keeling was in fact, at the time of her husband's death, no more dependent upon his earnings than she was upon the earnings of any member of the community of whom she had never heard, and from whom she had never received one farthing for her support. It may be that her husband was in the law bound to maintain her, but it is by the discharge of this obligation, not by its mere existence in law, that a husband supports and maintains his wife. It cannot in the nature of things be on a mere possession of a legal right, but rather on the effective enforcement of it in some shape or form, that a wife relies for her support. It is also, in my view impossible to come to the conclusion that there was any reasonable probability that she would ever enforce her right against her husband, or look to the result for her subsistence to any extent".

Lord Shaw in the same case, said:

> "The County Court Judge has omitted to state in his notes on what principle he arrived at that conclusion; but, as it appears to me, his finding, if sustained at all, can only be sustained on the ground that, in such a case as this, there is some presumption of law that a wife is, within the meaning of the statute, dependent upon the earnings of a husband, if he is under a legal obligation to maintain her. I assume he has proceeded on that principle.
>
> Isaac Keeling, the respondent's husband had never, during a period of over twenty years immediately preceding his death, contributed one farthing out of his earnings, or at all, to the support and maintenance of his wife, and I can not conceive how any reasonable man could, upon the evidence, come to the conclusion that he had, in fact, maintained her wholly or in part, or that there was any reasonable probability that he would ever do so, either voluntarily or under compulsion.
>
> She left him in 1888, taking her children with her. He was in the habit of thrashing her, she said. He then promised to pay her *1 s. 6 d.* per week for each child, but never did so. She then lost sight of him. She made inquiries about him but could not find him. She got a lawyer to write to him, but he took no notice of the letter. He continued to live at the house both of them occupied at Kirk Folly till 1890, and then left for Mansfield. She did not hear of him for a very long time after he left Mansfield. She never communicated with him, directly or indirectly, from thenceforward, never made any claim upon him, or received anything from him.

After she had left him she lived with her parents for some time, working occasionally as a servant in their house, and occasionally in a factory, and, for many years before his death, and up to that event, she had been employed as housekeeper by two miners, receiving from them as wages *16 s.* per week, out of which she had in fact exclusively maintained herself.

She has reared her children. They have for some time been married and placed out in life. It certainly would appear to me that this evidence clearly establishes that, apart from the presumption I have mentioned, Alice Keeling was in fact, at the time of her husband's death, no more dependent on his earnings than she was on the earnings of any member of the community of whom she had never heard, and from whom she had never received one farthing for her support. It may be that her husband was in bound to maintain her, but it is by the discharge of this obligation, not by its mere existence in law, that a husband supports and maintains his wife.

It is only necessary to read the provisions of statute of 1906 and its schedule, to see that the sums to be awarded under it are intended to be compensation for the pecuniary loss sustained by reason of the loss or cessation of the workman's power of earning."

And again Lord Shaw says:

"It by no means follows, however, that, though there is no presumption of law that a wife is dependent upon her husband's earnings merely because of his legal obligation to maintain her, this legal obligation is to be ignored in deciding on the fact of her dependency. On the contrary, the existence of the obligation, the probability that it will be discharged, either voluntarily or under compulsion, the probability that the wife will ever enforce her right if the obligation be not discharged voluntarily, are all matters proper to be considered by the arbitrator in determining the question of fact whether or not the wife, at the time of her husband's injury, looked to his earnings for her maintenance and support in whole or in part. It is one of the many elements to be taken into account".

New Monckton Collieries Co. vs. Keeling, 4 B. W. C. C. 332.

So it would seem from the decision last mentioned that under the English compensation act the law is now settled that there is no presumption that a wife is a dependent within the meaning of the act, but the fact of marriage, and all other facts are to be taken into consideration in arriving at a conclusion. This seems to us to be a distinction without a difference. The facts in *New Monckton Collieries, Ltd., vs. Keeling, supra,* were, however, such as to work the denial of compensation even if such a presumption existed, if the presumption were a rebuttable one. The effect of the decision is to make the question as to who is a dependent under the English law solely one of fact in every instance.

The words "dependant" or " dependent" are often used, in the policies of mutual benefit societies, especially those of a fraternal nature. It is provided by General Code, Sec. 9467, with reference to fraternal beneficiary societies that "the payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, step-father, step-mother, step-child, children by legal adoption, or *to a person or persons dependent upon the member.*

In *Starr vs. Maccabees, 6 C. C. (N. S.) 473,* which was affirmed by the Supreme Court without report, it was held that a woman who has occupied the relation of wife for a period of twelve years in the honest belief that she was the wife of the man with whom she was living, which relation, however, was unlawful, in that he had a wife living at the time from whom he had never been divorced, is a dependent within the meaning of the above section and the charter and by-laws of a benefit society organized in pursuance thereof, notwithstanding the policy was issued after the woman had discovered the unlawful relation. Of course, the facts in that case were entirely different from one under consideration. There the relation sustained was an illegitimate one. The assured was not civilly liable to support the woman with whom he was living in a state of adultery. In the case under consideration the decedent was not only civilly liable to support his wife and child, but could have been prosecuted and convicted of a felony, as will hereafter be shown, for failure to provide for his child. The Starr case is referred to simply to show that the word "dependant" as used in the statute is to be given a liberal construction.

In Joyce on Insurance, Sec. 773, it is said,

> "No definite rule can be laid down applicable to all cases as to who are "dependants". The meaning of that term must be governed by the particular facts of each case. It has been suggested that a person who receives aid and help from another where that person is under no moral or legal obligation to furnish aid, and who may at any time discontinue his help, is not a "dependant" and will not receive the benefit of such a certificate. This would, however, be too broad a proposition as a general rule. There are many cases where persons receive aid and help from others who are under no moral obligation whatever to provide such help. All those who receive such aid in a greater or less degree could not certainly be included in the provision. But oftentimes a person may have no support other than that from some distant relative who is poor and unable to provide for himself. In such case the person receiving such aid ought to be a "dependant" with relation to such member".

In the case of *McCarthy vs. New England Order of Protection,* 153 Mass. 314-318, the court said:

> "Trivial or casual, or perhaps wholly charitable assistance, should not create a relation of dependency within the meaning of the statute or by-laws. Something more is undoubtedly required. The beneficiary must be "dependent" upon the member in a material degree for support or maintenance or assistance, and the obligation on the part of the member to furnish it must, it would seem, rest upon some moral, or legal or equitable grounds, and not upon the purely voluntary or charitable impulses or disposition of the member".

We think the statutes of Ohio regulating the marital relations and defining the duties of parents to children should be considered in determining the meaning of the word "dependent" as used in the act under consideration.

General Code, Sec. 7997 provides:

> "The husband must support himself, *his wife,* and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able".

General Code, Sec. 13008 provides:

> "Whoever, being the father, * * * * of a legitimate or illegitimate child under 16 years of age, * * * * living in this state, being able by reason of property, or by labor or earnings, to provide such children * * * * with necessary or proper home, care, food and clothing, neglects or refuses to do so, shall be imprisoned in a jail or workhouse at hard labor not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years".

Under this statute, in order to convict a father charged with failure to provide for his minor children, it is not even necessary for the state to prove that a demand was made upon the father for the performance of the duty enjoined by this section. *State vs. Teal, 77 O. S. 77.* Neither is the father absolved from obligation imposed upon him by the statute because his divorced wife, having the child's custody, has provided it with sufficient support. *State vs. Stouffer, 65 O. S. 47.* Neither is it any defense to prosecution of the father under this section that an agreement was entered into between him and his wife, by which the wife was given the custody of their minor children and agreed for a valuable consideration to support them, and that after the mother became unable to support the children the accused offered to support them if the mother would surrender their custody, which she refused to do. *Bowen vs. State, 56 O. S. 235.*

In view of the provisions of the statute just referred to we do not think it was the intent of the legislature that such construction should be placed upon the word "dependent" as would deprive those of compensation whom it was made the statutory duty of the killed workman to support, and for the neglect of which duty he might during his lifetime have been convicted of a felony and sent to the penitentiary.

After giving the question thorough consideration, we have concluded that the widow and minor children of a killed employe are presumed to be dependent upon him for support, but that such presumption is a rebuttable one. What facts are necessary to overcome such presumption we do not think it necessary to consider, further than to say that in this claim the facts do not, in our judgment, overcome the presumption. No such presumption exists as to the mother and sisters, and the facts are clear, we think, that no such dependency existed in any degree.

The other question presented is as to whether the compensation can be paid directly to the beneficiaries, or whether it is necessary for an administrator of the deceased to file the application, receive the compensation and distribute it to those entitled thereto. Unlike the statutes providing for action for damages on account of wrongful death, Section 28 of the compensation act does not provide for any action to be taken by the administrator. There is no civil action of any kind. The statute simply provides who are entitled to the benefits. But the provisions of Secs. 1465-68, 1465-69 and 1465-74, General Code, (Sections 29, 30 and 35 of the act) are as follows:

> SEC. 1465-68. "The benefits, in case of death, shall be paid to such one or more of the dependents of the deceased, for the benefit of all the dependents, as may be determined by the board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the board deem proper, and shall operate to discharge all other claims therefor.

SEC. 1465-69. "The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the board."

SEC. 1465-74. "Benefits before payment shall be exempt from all claims or creditors and from any attachment or execution, *and shall be paid only to such employes or their dependents.*"

From these it is sufficiently clear to us that no administrator is necessary and that the compensation may be paid directly to the dependents upon their own application. The child of the decedent being only 20 months old, the payment for its benefit will be made to the mother, as this seems to be contemplated by the provisions of the above named sections. Otherwise, it would be necessary not only to have an administrator for the decedent but a guardian for the child. The compensation act was designed to do away with civil actions and all court proceedings not absolutely necessary and to make the compensation available at the earliest possible moment and with the least possible expense and trouble.

The order of the Board will be made in accordance with this opinion.

RE. CLAIM NO. 6.

EDWARD SCHMIDT, *Claimant.*

(July 10, 1912.)

An employe of an Ohio employer who, in the course of his employer's business is sent into a foreign state and is there injured while in the course of his employment, is entitled to compensation for the disability resulting from such injury.

STATEMENT OF FACTS.

The Rathbun-Jones Engineering Company of Toledo is a corporation engaged in the manufacture, sale and installation of gas engines and is a subscriber to the state insurance fund, being Risk No. 20, Class 10, Sub. Class 104. The engines of its manufacture being sold in many states and countries outside of Ohio, it is necessary for it to send certain of its employes out of the state to perform erecting work.

The claimant, Edward Schmidt, was on March 25, 1912, an employe of said The Rathbun-Jones Engineering Co., and had been in their service since December, 1907. On the 25th day of March, 1912, the claimant was engaged in erecting an engine in the plant of The Glencoe Cotton Mills Company, Columbia, South Carolina, to which place he had been sent by his employer for that purpose, and while so engaged slipped and fell from an elevated work platform while starting the engine. The fall resulted in injuries consisting of cuts and bruises on the head, two broken ribs, injury of his back and internal injuries, as a result of which he was totally disabled for a period of time from March 25th to July 6, 1912. The claimant is a citizen of Ohio, and his contract of employment was made in this state.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

In this claim we are required to determine whether necessary jurisdictional facts exist authorizing us to award compensation to the claimant.

General Code, Sections 1465-57 and 1465-59 (Secs. 20-1 and 21 of the Workmen's Compensation Act of 1911), provide:

> Sec. 20-1. "Any employer who employs five or more workmen or operatives regularly in the same business, or in or about the same establishment who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employe, *wherever occurring,* during the period covered by such premiums, provided the injured employe has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice, shall be deemed a waiver by the employe of his right of action as aforesaid.
>
> Each employer paying the premiums provided by this act into the state insurance fund shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such payment; and the same, when so posted, shall constitute sufficient notice to his employes of the fact that he has made such payment; and of any subsequent payments he may make after such notices have been posted."
>
> Section 21. "The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, that have been injured in the course of their employment, *wheresoever such injury has occurred,* and which have not been purposely self inflicted, or to their dependents in case death has ensued."

The language employed in these sections is reasonably clear. The first section above quoted undertakes to relieve the employer who subscribes to the state insurance fund of his common law and statutory liability to respond in damages in a civil action on account of his negligence resulting in injury to his employes, and in so doing deprives the injured employe of his right to maintain a civil action for damages on account of such injury. The last section above quoted gives to the injured employe who has thus been deprived of his right of action for damages a right to receive compensation from the state insurance fund on account of every injury received in the course of his employment *"wheresoever such injury has occurred"*, providing the same has not been purposely self inflicted, or to the dependents of such employe in case death has ensued. We think it is reasonably clear that we are to consider no questions of contributory negligence, assumption of risk or fellow servant doctrine in determining the right of a claimant to compensation, so no such questions will be considered and it only will be necessary so far as this phase of the matter is concerned for it to appear that the injury was not purposely self inflicted.

There are other provisions of the act affecting the right of an employe to receive compensation and the amount thereof which do not affect the right to compensation in the claim under consideration.

In the enactment of the workmen's compensation law the state, in effect, has said to the employer,

"A method has been provided by which a certain definite compensation will be paid on account of every injury or death sustained by your employes in the course of employment, regardless of whether you are at fault or not, and regardless of the doctrines of contributory negligence, assumption of risk and fellow servant. Such compensation will be paid from a fund to which you will contribute your just proportion and which will be administered by the state without cost to you. You may or may not adopt this plan as you choose. If you adopt it, you are given full constitutional protection against lawsuits on account of such injuries or deaths. If you do not adopt it, your liability for such injuries and deaths will be increased by the removal of the common law defenses".

To the employe it has said in effect:

"A plan has been devised whereby if you should sustain an injury in the course of your employment, compensation will be paid to you or to your dependents in the event of your death as a result thereof, and such compensation will be paid in every case of injury or death regardless of common law doctrines heretofore governing your right to recover damages. The amount of such compensation will be a definite amount determined by the nature and extent of your injury and the amount of wages you were receiving at the time of such injury. It will be paid to you promptly with little trouble and expense to you. It will be paid out of a fund to which your employer and yourself have contributed. If your employer has contributed to said fund, and you remain in his employ thereafter, you or your dependents will be compensated in case of your injury or death in accordance with this plan. By remaining in the employ of your employer after he has contributed to the fund you lose all right of action against him on account of his negligence and exchange a gambler's chance to recover a large amount of damages or no damages at all, for a definite and certain, though smaller, amount than would be possible for you to recover at common law under the employer's liability acts."

Considering the act as a whole, and especially the two sections above quoted, we believe that certain jurisdictional facts must appear in every instance before this Board is authorized to award compensation. These facts may be enumerated as follows:

1. That the employer of the claimant was a contributor to the state insurance fund at the time of the alleged injury.
2. That the applicant seeking an award was an employe within the meaning of the act at the time he received the alleged injury.
3. That an injury was in fact sustained.
4. That such injury was sustained "in the course of employment".
5. That such injury was not purposely self inflicted.
6. That such injury resulted in disability, either whole or partial, for a longer period of time than one week, or in death.
7. That no suit has been brought or attempted to be brought by the claimant in any court prior to filing his claim with the Board.

The finding by the Board of the non-existence of any of the facts above enumerated would result in the denial of an award, but if all of these facts exist, the right of the claimant to an award is manifest.

It has been suggested that inasmuch as the claimant whose claim we now

have under consideration was injured in the State of South Carolina, that the laws of that state must govern his rights in the premises, on the theory that the workmen's compensation act like other laws, has no extra territorial effect. This Board is not vested with judicial powers, and under the provisions of our constitution could not be so vested, but we do not understand that our lack of judicial power precludes us from construing the act under which we are operating and ascertaining all of the facts necessary to be determined in any claim of which we have jurisdiction. Furthermore, we believe that in the construction of the act we should be guided by well recognized principles of statutory construction, and that if we occasionally undertake to ascertain and apply tolerably well recognized principles of law to the ascertained facts, such action on our part will not constitute an invasion of the realm of judicial power. Such is our understanding of the law as enunciated by the Supreme Court in a number of decisions, among which may be mentioned *State ex rel vs. Harmon, 31 O. S. 250; State ex rel vs. Hawkins, 44 O. S. 98; France vs. State, 57 O. S. 1 and State ex rel Yaple vs. Creamer, 85 O. S. 349.*

In the latter case the court quotes with approval the language of Judge White in *State ex rel vs. Harmon, supra:*

> "The authority to ascertain facts and apply the law to the facts when ascertained pertains as well to other departments of government as to the judiciary".

The following language of Judge Minshall in *State ex rel vs. Hawkins, supra,* is also quoted with approval:

> "What is judicial power cannot be brought within the ring-fence of a definition. It is undoubtedly power to hear and determine, but this is not peculiar to the judicial office. Many of the acts of administrative and executive officers involve the exercise of the same power".

So that, strictly speaking, while it is not the province of this Board to assume and exercise what is known as judicial power, it is nevertheless its duty to interpret and apply the law to the facts found by it to exist.

We assume that it is true, as a general proposition, that the laws of a state have no extra territorial effect. However, without undertaking to enter into a discussion of abstruse questions of law that might be involved in the consideration of the proposition in the abstract we have concluded that the question is not involved in this claim; at least not to the extent of determining its merits. It is true the Supreme Court of Ohio held in a number of cases decided prior to the enactment of General Code, Sec. 10770, in its present form (formerly R. S., Sec. 6134a) that an action could not be maintained for causing death by wrongful act, neglect or default where the wrongful act which caused the death was committed outside of the State of Ohio. *Woodard vs. Railroad Co., 10 O. S. 121; Hover, Admr., vs. Penn. Co., 25 O. S. 667; Brooks vs. Railway Co., 53 O. S. 655.* In these cases actions were brought under the Ohio statute allowing a recovery by the representatives of a party whose death was caused by the wrongful act of another. Since the decisions of the Supreme Court above referred to, Section 10770 of the General Code has been amended so as to give the Ohio Courts jurisdiction in such actions in all cases where the state, territory or foreign country in which the wrongful act took place allows enforcement in its courts of the statute of this state giving a right of action under a similar state of facts. The court in subsequent decisions has recognized the validity of this legislation so that now such

actions, with certain limitations, are authorized to be maintained in the courts of this state. It will be noted that the Supreme Court in all of the decisions herein referred to dealt with the right to maintain an action for causing wrongful death. We assume that no such question could arise in an action for personal injury only, as that right is not given by statute but by the principles of common law; whereas a right of action for death by wrongful act had no existence at common law and is purely statutory. These decisions and Sec. 10770 of the General Code are referred to not because they have any direct bearing on the question which we have under consideration but because we think they reflect upon the tendency of legislation and confirm the right of the legislature to enact laws conferring jurisdiction on Ohio tribunals to hear and determine such actions where the wrongful act resulting in death occurred in a foreign state or country. This tendency was followed by the legislature in enacting the workmen's compensation act, for it is therein provided not only that the employer who contributes to the state insurance fund shall thereby be absolved from liability on account of injuries or death of any of his employes *"wheresoever occurring"*, but it authorizes this Board to pay compensation to all such employes as may have been injured in the course of their employment *"wheresoever such injury has occurred."*

Looking at the matter from another standpoint it may be said that the claimant has no cause of action against his employer; that is, that by the terms of the compensation act he is deprived of his right of civil action and the right to compensation has been substituted therefor, and his rights thereunder have been made so clear and broad by the terms of the act that he is not placed under the necessity when injured in a foreign state or country, to rely upon the laws of such state or country for the recovery of damages or compensation nor to resort to their courts for redress. It seems to us that the plain language of the statute as well as the mutual interests of the employer and employe demand this interpretation of the law. Confirmatory of this view, it may also be noted that under rules and regulations of this department the employer is required to pay a sum of money into the state insurance fund which is determined by the hazard of the employment in which he is engaged and the amount of his wage expenditure, and that all wages expended in pursuance of contracts of employment made in the State of Ohio are included therein, so that the employer of the applicant has paid his premium based on such statements of wage expenditure, which includes the wages of the claimant and all others similarily employed.

We think the right of the claimant to compensation is clear and it will be so ordered.

RE. CLAIM NO. 392.

WILLIAM PETERS, *Claimant.*

(November 6, 1912.)

The condition known as lead poisoning is an "occupational disease," and the disability resulting therefrom is not one for which compensation is authorized to be paid out of the state insurance fund to employes *"that have been injured in the course of their employment."*

STATEMENT OF FACTS.

The claimant, William Peters, of Newport, Kentucky, entered the service of National Lead Company on May 31, 1912, as a workman in its lead works in the City of Cincinnati. The National Lead Company was at that time, and

now is a subscriber to the state insurance fund, being Risk No. 109, Class 2, Sub. Class 25. He continued in the service until June 20, 1912, when he became ill with "lead poisoning", and as a result thereof he was completely disabled for a period of about 75 days.

In the "First Notice of Injury" report, which was not filed until September 10, 1912, the date of the "injury" is given as June 20, 1912, and the nature of the injury is given as "occupational disease, suffering from lead poison". In the application of claimant, filed September 19, 1912, the injury for which compensation is claimed is described as "lead poisoning", and in paragraph 43 of the application the following appears: "43. Names of three witnesses who witnessed the accident: Wasn't an accident — just took sick as result of being near the lead and had to go home." The employer's affidavit and attending physician's report are to the same effect.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

The question to be determined in this claim is whether the disease known as lead poisoning is an "injury" contemplated by the Workmen's Compensation Act of 1911 for which payment of compensation is to be made out of the state insurance fund.

The facts shown in the proof on file clearly show that the condition of the applicant did not result from anything that might be termed an accident. In fact the application of the claimant distinctly states that there was no accident, that he simply became ill and had to cease work, and that a considerable period of disability followed.

Section 1465-59 of the General Code (Sec. 21 of the Workmen's Compensation Act of 1911), is as follows:

> "The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into the state fund the premiums applicable to the classes to which they belong, that have been *injured* during the course of their employment, wheresoever such injury has occurred, and which have not been purposely self inflicted, or to their dependents in case death has ensued".

If the word "Injury" is to be construed as including every kind of disability that might arise on account of the nature of the employment, whether the same is the result of some accident resulting in bodily injury and consequent disability or whether resulting from the very nature of the work being done, the disability taking the form of a disease the development of which is gradual, then the applicant is entitled to compensation. But if the word is to be taken in its ordinary and popular sense, then the applicant is not entitled to compensation, for by the term "injury" it is generally understood that some sudden and unexpected event has inflicted bodily harm resulting in a disability.

The English Compensation Act of 1897 (60 & 61 Vict. c. 37), enacted August 6, 1897, provided for the compensation of workmen on account of "personal injury by accident arising out of and in the course of the employment" and made no specific provision for compensation for disability resulting from what are known as "occupational diseases". Under this act it was held by the Courts of Appeals of England that lead poisoning was not an "accident",

and that one suffering from lead poisoning contracted in the course of his employment was not entitled to compensation.

Steel vs. Cammell, Laird & Co., Ltd., 7 W. C. C. 9.

This decision was rendered May 10, 1905. Prior to that time, the House of Lords, in the case of *Fenton vs. Thorley & Co.,* 5. W. C. C. 1, decided that a rupture sustained by a workman in the course of employment was an accidental injury and that the workman sustaining such injury was entitled to compensation. The decision in the latter case turned largely upon the meaning to be given to the word "accident" as it appears in the English act, the judgment being in effect that the word was to be taken in its popular and ordinary sense and that it included any unexpected personal injury from any unlooked-for mishap or occurrence. This definition, it was held, in the case of *Steel vs. Cammell, Laird & Co., supra,* to preclude the allowance of compensation in a case of lead poisoning, as it could not be said to be unexpected or to result from an unlooked-for occurrence. On the contrary, the facts were that the poisoning was such as might have been expected because of the applicant's work, and the disease might have been developed in different ways, such as by breathing the poison into the lungs, or by eating food without removing lead from the hands, or by absorption through the skin.

In *Steel vs. Cammell, Laird & Co., supra,* Collins N. R., after reviewing the dicision in the case of *Fenton vs. Thorley & Co., supra,* said:

> "It appears, then, that an accident must be a mishap from which the element of haphazard has been eliminated, and the word must be treated as being used in the ordinary, popular sense. The result seems to be that we are about in the position of a man in the street for the purpose of deciding whether the facts of any particular case disclose an accident. I think, therefore, that I ought, without giving reasons, to say whether on the facts of this case I find that the injury arose out of an accident. Here the injury was that of lead poisoning and it was brought about by the applicant being saturated with lead in consequence of being in continuous contact with it. * * * * In my opinion it is clear from s. 2 (2) of the act that an accident must be something of which the date must be fixed. It is impossible in this case to fix the date of that from which the injury arose. * * * * Being in the position of the man in the street I come to the conclusion that in the circumstances of this case that which caused the injury cannot be described as an accident".

It is well to observe at this time that under the Ohio act the injury from which the disability results need not occur through an "accident". That is, the statute does not specifically provide, as does the English act, that the injury for which compensation is payable must be brought about by accidental means. It authorizes the payment of compensation "to such employes * * * that have been injured in the course of employment * * * and which have not been purposely self inflicted." We think, however, that the "injury" therein referred to, for which compensation is authorized, while it may not technically be accidental, must be such as cannot be classed as a disease. If this view is not taken it could well be urged that a workman contracting typhoid fever or any other disease during the period of his employment is entitled to compensation, because it is not necessary that the injury grow *"out of"* the employment but only that it be sustained *"in the course of"* the

employment. We also think that the fact that the constitution of the state has recently been amended so as to specifically authorize compensation for occupational diseases, and that the General Assembly during the same session in which the Workmen's Compensation Act was passed adopted measures looking toward the investigation of occupational diseases, indicate a purpose to provide for such compensation at some future time, and that the General Assembly and the members of the Constitutional Convention which submitted the aforementioned amendment did not have in mind that any provision had been made in the workman's compensation act for the compensation of occupational diseases.

Taking this view of the matter, compensation will be denied the claimant.

RE. CLAIM NO. 507.

ELIDA A. BAIRD, ET AL, *Claimants.*

(November 11, 1912.)

1. The widow and minor children of a deceased workman, with whom he lived and whom he supported at the time of his death, and who had at the time no property or income of their own, were wholly dependent upon such deceased workman for support at the time of his death, and are entitled to compensation as such dependents.
2. Where an employe has been continuously employed for a considerable period of time, his "average weekly wage" is determined by dividing the aggregate amount of his earning by the number of weeks he was employed.

STATEMENT OF FACTS.

George E. Baird was on the third day of October, 1912, an employe of the Wardlow-Thomas Paper Company of the city of Middletown, a subscriber to the state insurance fund, and had been in their employ for about two years. On said date he was acting as a fireman and was killed while assisting in overhauling the boiler in his employer's plant.

In the "First Notice of Injury" appears the following:

> 4. "Exact location of place where accident happened?"
> "In fire room, side rear of No. 2 B. & W. boiler."
> 5. "How did accident happen?"
> "Mud drum of No. 2 B. & W. boiler gave way and man was found dead under pile of brick".
> 6. "State fully nature of injury which caused death of deceased".
> "Scalded and covered with brick".

The allegations contained in the application which was made by Elida A. Baird, widow of the applicant, are substantially the same. So are the employer's affidavit and the physician's certificate. The deacesed left surviving him Elida A. Baird, his widow, Rhoda Baird, daughter, aged 8 years, and Louise Baird, daughter, aged 4 years, all of whom were living with the deceased at the time of his death and being supported by him. They did not, at the time of the decedent's death, own any real or personal property or have any source of income upon which they could rely for support, and relied wholly upon the personal earnings of the decedent for support.

The application was filed by Elida A. Baird on behalf of herself and her two minor children. It alleges that the average weekly wage of the deceased was $13.50. The same statement is made in the First Notice of Death and

in the employer's affidavit, which was made out on October 16, 1912, and filed with this department on October 19, 1912. This department is in receipt of a letter from the employer under date of October 18, 1912, with reference to the subject of wages, which is as follows:

"MIDDLETOWN, OHIO, October 18, 1912.

"The State Liability Board of Awards, Columbus, Ohio.

"GENTLEMEN: — We herewith enclose you statement of wages earned by George E. Baird from January 1 to September 28 inclusive, as guides for your consideration in estimating the amount which is to be awarded to his widow.

"In making out claim papers we put down as his regular weekly wages $13.50, but find that his earning capacity was considerably greater than that on account of overtime, etc., which you will note from the enclosed statement of wages that he drew from week to week.

"We trust that your Board will take this under advisement in awarding the claim and do everything you possibly can in making the allowance as generous as possible on the strength of enclosed statement.

"Thanking you very kindly for courtesies extended, we remain,

"Yours respectfully,

"THE WARDLOW-THOMAS PAPER CO.
"By M. W. THOMAS."

This letter was written in response to an inquiry issuing from this office requesting the employer to furnish a statement of the wages earned each week for a period of one year immediately preceding the death of the deceased. The statement furnished covers a period from January 1st to September 28th, 1912, inclusive,—a period of thirty-nine weeks, the aggregate earnings being $586.55, which would make an average of $15.04 per week. His weekly earnings varied from $10.15 per week to $19.15 per week, his weekly wages at that time being $13.50.

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur).

The proof on file discloses the existence of all the jurisdictional facts authorizing an award, the only questions being the amount thereof, its apportionment among the beneficiaries, and the method of payment.

The dependents are the widow and two minor children of the deceased. Prior to his decease they all lived together and constituted a family. The mother and children at the time of the death of the husband and father had no property or income of their own but relied solely upon his wages for support. That being the state of affairs they are to be considered as "wholly dependent" within the meaning of Paragraph 2 of Section 1465-67 (Sec. 28 of the Workmen's Compensation Act of 1911).

There remains only the question as to the amount of the compensation. The deceased was employed at a weekly wage of $13.50. As a matter of fact he earned more, for while he occasionally lost time he more than made it up by working overtime, for which he was paid in addition to the $13.50.

Sections 1465-70 and 1465-71 (Secs. 31 & 32 of the Workmen's Compensation Act of 1911) are as follows:

> SEC. 1465-70. "The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits."
>
> SEC. 1465-71. "If it is established that the injured employe was of such age and experience when injured as that under natural con-

ditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage."

These are the only provisions of the act with reference to the average weekly wage.

Section 1465-65 (Sec. 26 of the Workmen's Compensation Act of 1911) provides that an injured employe who has sustained temporary or partial disability shall receive sixty-six and two-thirds of the "impairment of his earning capacity during the continuance thereof, etc."

Section 1465-66 General Code (Sec. 27 of the Workmen's Compensation Act of 1911) provides that an employe, who has suffered total disability shall be paid sixty-six and two-thirds per cent. of his "average weekly wage" until his death.

The same expression is used in Section 1465-67 (Sec. 28 of the Workmen's Compensation Act of 1911) with reference to dependents, so that it is clear that we are to pay sixty-six and two-thirds per cent of the "average weekly wage"; but how are we to determine the "average weekly wage"?

Section 1465-70 directs us to take the average weekly wage *at the time of the injury* as a basis upon which to compute the benefits. We think the word "average" must have some meaning. If this section had reference to the particular week in which the injured person sustained his injury, it might result in much injustice.

To illustrate, take the claim under consideration. The injured employe was last paid his weekly wages on September 28 and received $16.90 on that date. He had not completed another full week at the time of his death and it does not appear from the proof just what his earnings were that particular week. Some weeks he had earned as low as $10.15. While we have not adopted any rule for ascertaining the average weekly wage, believing as we do that this fact must be determined from the proof in each particular case, we think that as the employe in the claim under consideration had been in the employ of his employer for about two years, we should take a period of that time, ascertain the wages during the period and strike an average. We have asked the employer to furnish us such a statement covering a period of one year immediately preceding the date of the employe's death. We have been furnished a statement covering a period of about nine months. There is nothing to indicate that the employe was of such age and experience when killed as would lead us to conclude that his wages might be expected to increase, so that Section 1465-71 above mentioned is not a governing factor.

The claimants having made their claim for compensation based upon an average weekly wage of $13.50, an award will be made on that basis and the claim will be continued indefinitely so that should additional information be furnished showing the wages earned by the deceased for one full year preceding his death, and it should appear that his actual earning capacity exceeded that amount, the finding now made be modified accordingly.

The only question remaining is as to the apportionment of the award, and the payment thereof.

Following our decision in *re. claim No. 41, Laura M. Shaffer et al., claimants*, the award will be paid to the applicant, Elida A. Baird, for the use of herself and minor children, $3.00 per week to be the portion of each.

RE. CLAIM NO. 296.

FRANCES R. WILLIAMS ET AL., *Claimants.*

(November 15, 1912.)

An employe was killed in the course of his employment leaving surviving him a widow and a son 35 years of age, mentally and physically deficient, but who, for a number of years prior to and at the time of the death of the workman, was employed at a weekly wage of $7.50. The killed employe had not been employed for a considerable time prior to taking employment in the position in which he was killed, which employment was entered upon by him the day preceding the day he received the injury resulting in his death, at a weekly wage of $9.44, which was the usual wages paid in the locality for the kind of work in which he was engaged.

HELD: 1. That where the period of employment has been so short as to furnish no basis for determining the *average* weekly wage, the rate of wages received by the workman at the time of receiving the injury and the wages usually paid in the vicinity for the same class of work may be taken into consideration in determining the average weekly wage.

2. That the widow was wholly dependent upon the deceased for support.

3. That the son was neither wholly or partially dependent upon the deceased for support.

STATEMENT OF FACTS.

On August 15, 1912, Isaac T. Williams was in the employ of The Brush-McCoy Pottery Company, of Roseville, Ohio, which company was at the time a subscriber to the state insurance fund, being Class 17, Sub Class 5, Risk No. 245.

Said Williams was employed on August 14, 1912, at a weekly wage of $9.44. Prior to that time he had not been employed for over two years. He was a baker by trade. It appears that the wages paid for the kind of work he was employed to do was from $9.00 to $10.00 per week in the vicinity of his employment. On the 15th day of August, 1912, said Isaac T. Williams received an injury from the effects of which he died almost instantly. He was employed in trucking ware in a pottery and in the course of his employment it was necessary for him to transport ware from one floor of the building to another by means of an elevator, and the injury happened while the decedent was operating the elevator, whether from any defect in the elevator or from negligence or inexperience of the decedent does not clearly appear, as there was no eye witness to the accident.

The decedent was 61 years of age and left surviving him Frances R. Williams, his widow, residing in Roseville, Perry County, and William Williams, a son 35 years of age, resident of the same place, both of whom are applicants for compensation on the theory that they were dependent upon the deceased for support, the widow claiming to be wholly dependent and the son partially dependent.

It appears from the proof on file that the decedent, Frances R. Williams and William Williams, his son, constituted a family; that the widow is 65 years of age; and that she had no means of support other that that provided for her by her husband and the contribution made to the family fund by her son. The son, William Williams, is physically and mentally deficient, but at the present time and for nine years past has been employed by The Ransbottom Brothers Company in the capacity of mould runner or off bearer at a wage of $1.25 per day or $7.50 per week; that the position he holds is considered as a boy's job, and that his employers do not consider him capable of performing a man's work and earning a man's wages.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

This claim was before the Board for hearing on September 16th last, on the application of Frances R. Williams, when an order was made for the payment of funeral expenses and the payment of compensation to said Frances R. Williams in the sum of $6.28 per week until the further order of the Board, and a continuance was had until such time as the claim of William Williams should be perfected. His application and proof having since been filed, the claim is now before us for rehearing and for final disposition.

On the former hearing we had no trouble in arriving at the conclusion that Frances R. Williams, the widow of the killed workman, was wholly dependent upon him for suport at the time of his death, to which conclusion we still adhere.

We now think it is equally clear that the son, William Williams, should not be considered as a dependent.

The act contemplates that a state of dependency must exist at the time of the death of the workman, and while there may be claims in which there is a presumption of dependency (*See re. Claim No. 41, Laura M. Shaffer et al.*), there is no such presumption in the present claim, the claimant being a son of the decedent of the age of 35 years. Moreover, the claimant at the time of the death of the workman and for nine years prior thereto, had been earning sufficient wages to maintain himself. So that there was not only no presumption of dependency, but the facts clearly show that none existed.

The former order of the Board will not be modified, unless the amount of compensation is affected by our finding as to the "average weekly wage" of the decedent at the time of his death, which is the only other question remaining for determination.

The deceased workman had been out of employment about two years prior to his death. He had formerly been a baker by trade, but the day preceding his death he was employed by the pottery at a wage of $9.44 per week as a ware trucker.

Section 1465-67, General Code, (Sec. 28 of the Workmen's Compensation Act of 1911, 102 O. L. 524) provides in substance that sixty-six and two-thirds per cent of the average weekly wage shall be paid to the dependents for a period not exceeding six years after the date of the injury and not to exceed in amount the sum of $3,400 nor less than a minimum of $1,500.

Section 1465-70, General Code, (Sec. 31 of the Workmen's Compensation Act of 1911, 102 O. L. 524) is as follows:

> "The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits."

The word "average" would indicate that some period of time is to be taken into consideration in ascertaining the "average weekly wage". If the actual weekly wage being received by the applicant at the time of the injury was to be taken as a basis, the use of the word "average" would not be necessary. We assume that the legislature intended the word to have some meaning, and while no period is designated during which the wages of the deceased workman shall be taken in order to procure an average wage, it is evident that some period must be considered. The workman at the identical time of his death might have been receiving much less wages than he was accustomed to receive, or he might have been receiving much more than his usual wages, hence the provision that the compensation must be based upon the *average* wage. But in the claim under consideration the deceased workman

had not been earning any wages for a long time prior to his employment on the date preceding the injury which resulted in his death, so that if we endeavored to ascertain his average weekly wage from the wages earned over a period of a year preceding his injury he would have no average weekly wage at all. We think no general rule can be laid down for the ascertainment of the average weekly wage, but that it should be ascertained by taking into consideration the amount of wages earned by the decedent for a considerable time preceding the injury resulting in his death, the wages he was receiving at that time, the prospect of his continuing to receive such wages, his age and the probability of his being able in the natural course of events to earn a greater or less amount of wages in the future, and the wages usually paid for the same kind of work in the same locality.

Taking this view of the matter we think that $9.44 per week should be considered the average weekly wage of the decedent, and that compensation should be made on this basis.

RE. CLAIM NO. 1014.

GERTRUDE PATTERSON, *Claimant.*

(December 16, 1912.)

1. When an employe is taken ill while at work and dies soon thereafter, there is no presumption that he was killed "in the course of employment."
2. The burden of proof in all claims for compensation rests upon the claimant to furnish convincing proof to the Board as to every jurisdictional fact; or to furnish proof of facts from which such jurisdictional facts may be clearly deduced.

STATEMENT OF FACTS.

W. Fred Patterson was an employe of The National Machinery Company, of the city of Tiffin on the 30th day of November, 1912, in which employment he had been engaged for about one year and nine months previous to that date. The National Machinery Company was at the time a subscriber to the state insurance fund. Said Patterson died on the last mentioned day leaving surviving him Gertrude Patterson, his widow, Ethel Patterson, a daughter aged 20 years, and Orrville Patterson, a son aged 7 years, all living at 254 Greenfield Street, in the city of Tiffin.

The application for compensation is filed by Gertrude Patterson, the widow, on behalf of herself and the two children, and claim is made that the daughter, Ethel Patterson, was partially dependent and the son Orrville and herself both wholly dependent upon the deceased for support at the time of his death, and that he came to his death "in the course of his employment" as the result of an electrical shock which he received on November 26, 1912. The 26th and 27th paragraphs of the application are as follows:

> 26. "Date of accident Nov. 26.
> "Hour of day 10 o'clock A. M."
>
> 27. "State clearly the manner in which accident occurred."
> "He was doing some work and a chain fell over an electric wire and he received a shock."

The First Notice of Death was filed with this department on December 9, 1912. It was signed by the superintendent of The National Machinery Company, and the 5th paragraph is as follows:

5. "How did accident happen?"

"He told some of the men that he got a shock through a chain that was thrown over a crane trolley wire of 220 volts. The above was never reported to the office and from the information we can gather he was a least four feet from the chain when the same was thrown over the wire, and we do not think he received any shock at all, merely a scare from the fire flying caused by the chain coming into contact with the trolley wire. One of our employes, Joseph Schultis, said that the decedent carried the chain up a ladder and handed it to him and he threw the chain over the wire, and that the deceased did not have hold of the chain when it was over the trolley wire".

The attending physician in his report says that he first visited the deceased on November 29, 1912, the date preceding his death; that the immediate cause of death was perforation of the bowel, the remote cause ulceration of the bowel. Paragraph 16 of the physician's certificate in proof of death contains the following question:

"So far as you know, is there any reason to suspect that this case is not a perfectly fair one and above all suspicion of concealment of necessary facts and information?"

to which the doctor replies:

"My attendance was for illness and not accident. Post mortem showed cause of death clearly".

It further apears that a post mortem examination was held by the attending physician, Dr. Robert C. Chamberlain, assisted by Dr. B. W. Mercer, on December 30, 1912, the certificate to that effect being with the proof on file, sworn to by Dr. B. W. Mercer, in which he states:

"The finding was a perforation of the bowel following ulceration, which was sufficient cause of death."

From the employer's certificate, made under oath by E. R. Frost, of The National Machinery Company, it appears that the deceased employe frequently complained of pain in his side but otherwise was in good health so far as known by the employer; that after the time of the alleged injury the decedent remained at work until the day before his decease. Joseph Schultis, with whom the deceased was working at the time of the alleged injury, says in paragraphs 24, 25 and 32 of the "Certificate and Oath of Lay Witnesses":

24. "Describe injury which caused death of deceased".

"He was helping me and said he got a shock when I threw a chain over an electric wire. I had the chain in my hand and he didn't have hold of it".

25. "Where was deceased taken after accident?"

"Remained at work".

32. "What in your estimation was the immediate cause of the injury?"

"I do not think he was injured at all".

The facts in this claim were also investigated by the Chief Inspector of this department, who reports in substance that at the time of the alleged injury the decedent was a machinist's helper and was working with a man by

the name of Joseph Schultis; that they were engaged in re-babbitting a box on a testing line shaft; that during the course of the work the deceased carried an iron chain up a ladder on which Schultis was standing and handed the same to him; that the deceased then took a stand about four feet from where Schultis was standing on the ladder; that Schultis threw the chain over some trolley wires causing a number of sparks to fly and blowing out the fuse on the switchboard, all the time holding the chain in his hand; that the deceased did not come in contact with either the chain or the wire at any time after he placed the chain in the hands of Schultis; that after the happening of this incident they continued on with their work until the end of the day and that the deceased did not thereafter refer to the occurrence.

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur).

We are convinced from the proof on file that the deceased did not come to his death as the result of any injury received by him in the course of his employment. On the contrary, he died from natural causes, if the statement of his attending physician and the other physician who assisted in performing the post mortem examination are to be credited, and nothing has been filed in this claim to discredit their statements. We are authorized to pay money from the state insurance fund only when certain facts exist. Therefore proof of the existence of such facts must be made in every claim for compensation on account of injury or death; or other facts must be proved from which such jurisdictional facts will be presumed. It follows that there is no presumption that death was caused by an accident occurring in the course of employment from the fact that a workman in a fair state of health dies suddenly while at work or after an illness of short duration. It further follows that the burden of proof is upon the applicant claiming compensation to furnish convincing evidence to this department as to the existence of all the facts necessary to authorize it to make an award.

Such facts not appearing, this claim will be denied.

RE. CLAIM NO. 1013.

HARRIET H. HORN, *Claimant.*

(December 23, 1912.)

1. An employe who lost his life in a burning building in which he was employed was killed "in the course of his employment" and his dependents are entitled to compensation.

2. A pension from the United States Government on account of service rendered in the Army or Navy, or on account of disability incurred in the military or naval service, will not be considered in ascertaining the "average weekly wage."

STATEMENT OF FACTS.

John A. Horn was on the 6th day of December, 1912, in the employ of The Buckeye Carriage Body Company, of Bellefontaine, which company was engaged in the manufacture of vehicle bodies, and was at the time a subscriber to the state insurance fund. Said Horn was on the date above mentioned engaged at his usual work as a carriage maker, being employed on the second floor of the factory building when the building caught fire and burned

to the ground, the employe perishing in the flames. He had been employed by the company thirty years, was 72 years of age and was at the time of his decease, and for two years previous thereto, receiving a weekly wage of $13.50. He left surviving him Harriet H. Horn, his widow, aged 60 years, who is the sole claimant for compensation. She was living with her husband at the time of his decease in the city of Bellefontaine. It appears that the only means of subsistence of the family during the lifetime of the deceased was his weekly earnings as such employe and a pension of $15 per month as a veteran in the Civil War.

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur).

All of the jurisdictional facts authorizing an award seem to exist in this claim.

The deceased employe having lost his life by the burning of the building in which he was employed during the hours of employment, was killed "in the course of his employment".

The only question in the claim which has given us any concern is as to whether the widow should be considered as wholly or only partially dependent upon her husband for support. As her husband during his lifetime was the recipient of a pension from the United States Government in the sum of $15 per month on account of services rendered in the war between the states, she could not have been wholly dependent upon the *earnings* of the deceased as an employe of The Buckeye Carriage Body Company.

In cases of temporary partial or total disability it is provided by Sections 1465-65 and 1465-66 General Code (Secs. 26 and 27 of the Workmen's Compensation Act of 1911) that the compensation shall be "sixty-six and two-thirds of the average weekly wage" of the injured employe, in addition to medical, nurse and hospital services and medicines as provided in Section 1465-62 General Code, (Sec. 23 of the Workmen's Compensation Act of 1911).

Section 1465-67 General Code (Sec. 28 of the Workmen's Compensation Act of 1911) provides:

> "In case the injury causes death within the period of two years the benefits shall be in the amounts and to the persons following:
>
> 1. If there be no dependents, the disbursements from the insurance fund shall be limited to the expense provided for in Sections 23 and 24 (G. C. 1465-62, 1465-63).
>
> 2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wage and to continue for the remainder of the period between the date of the death and six years after the date of the injury, and not to amount to more than a maximum of $3,400, nor less than a minimum of $1,500.
>
> 3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wage and to continue for all or such portion of the period of six years after the date of the injury, as the Board in each case may determine, and not to amount to more than a maximum of $3,400."

Paragraph 1 of the foregoing section should be construed with Section 1465-63 of the General Code (Sec. 24 of the Workmen's Compensation Act of 1911), which provides in substance that in all cases of death reasonable funeral

expenses not to exceed $150 in amount shall be paid from the fund in addition to the award.

It will be noted that paragraph 2 of Section 1465-67 above quoted provides for payment to such person as may be "wholly dependent * * * * *at the time of the death*". It does not specifically state that such persons must be wholly dependent upon the *personal earnings* of the deceased workman. That being the case, we are not at liberty to place a construction upon the section at variance with its plain and unambiguous language. Whether we should consider the fact that an employe, at the time of his death, possessed an income from property owned by him; or the fact that a claimant is possessed of property from which an income is derived are questions which are not involved in this claim, and which we do not now attempt to determine.

In the claim under consideration the claimant was not dependent upon any person for support other than the deceased; she was earning nothing to support herself and owned no property from which she derived an income. She was, therefore, "wholly dependent" upon the deceased at the time of his death, and should be compensated in accordance with the provisions of paragraph 2 of G. C. Sec. 1465-67.

The purpose of the law is to provide for the payment to the dependents of the deceased workman compensation for the financial loss they have sustained as a result of his death, in so far as that may be done by the payment to them of two-thirds of the average weekly wages earned in the employment in which the workman was engaged at the time of his death. The deceased employe earned $13.50 per week as an employe of The Buckeye Carriage Body Company. He was paid a sum of $15 per month by the United States Government as a pension, which ceased at the time of his death. It could hardly be claimed that the pension should be taken into consideration in arriving at the "average weekly wage", thereby increasing the amount to be paid to the dependent. Neither do we think it should be taken into consideration in reducing the amount of the award.

A finding will be made that the claimant was wholly dependent upon the deceased at the time of his death and award made accordingly.

RE. CLAIM NO. 1645.

ANNA KING, *Claimant.*

(January 29, 1913).

1. An employe killed while operating a derrick on the premises of his employer, the same being a part of the duties he was required to perform under his contract of employment, was killed "in the course of his employment."
2. His widow, with whom he lived prior to his decease, who had no separate estate and no income of her own but subsisted entirely upon the earnings of her husband, is a wholly dependent person and entitled to compensation as such.
3. An employe having been regularly employed at the same employment for a period longer than one year, the average weekly wage is determined by dividing the aggregate amount of his earnings for the year preceding his death by 52.

STATEMENT OF FACTS.

Thomas A. King was on the 18th day of January, 1913, an employe of Topper Brothers, junk dealers of the City of Columbus, in whose employ he had been more than a year prior to his death. Topper Brothers were on said date subscribers to the state insurance fund.

On the date last mentioned the deceased was lowering a piece of heavy shafting by means of a derrick. One end of the shafting struck the ground

jarring the other end loose and the shaft fell striking the deceased on the side of the head killing him instantly. The accident happened on the premises of the employer. The deceased left a widow, Anna King, aged 59 years, who has filed the application herein alleging that she is the sole dependent of the deceased. She alleges that King was receiving a weekly wage of $12 at the time of his death and had been receiving such wage for a period of two years. The affidavits of the employer also state the average weekly wage of the deceased to be $12.

An examination of the books of the company by our Auditing Department discloses that the total earnings for the year immediately preceding his death amounted to the sum of $507. This is due to the fact that King did not work steadily throughout the year, his maximum wage being $12 while the minimum sometimes ran as low as $4.00 per week. The proof on file does not disclose any other persons in any degree dependent upon King at the time of his death.

By the Board:— (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

The proof on file discloses the existence of all the jurisdictional facts authorizing an award, the only question being the amount thereof. The deceased was employed at a weekly wage of $12 but did not work continuously, his weekly earnings for the year immediately preceding his death fluctuating from $4.00 to $12.00. The act under which we are operating does not prescribe any rule by which the "average weekly wage" is to be ascertained, thus leaving each claim for compensation to be determined in accordance with its own peculiar state of facts. Perhaps it is well that no attempt was made to provide such a rule at the time of the enactment of the statute, as it would be difficult to prescribe a rigid rule which would do absolute justice in all cases. We have had occasion to consider the question in several claims heretofore heard and passed upon by us and our conclusion as to a rigid rule is as above stated. However, we believe that rules may be evolved from our experience that may govern a considerable number of claims, and in cases like the one now under consideration, where the employe had been employed by the same employer for a considerable period of time preceding his death, that the aggregate amount of his earnings should be taken for a year preceding the date of his death and divided by 52 to ascertain his average weekly wage. We have used this rule in determining the average weekly wage of the decedent, and think it should govern in all cases where the facts are identical.

Applying this rule we find that the average weekly wage of the deceased employe at the time of his death was $9.75, and this sum will be taken as the basis in calculating the award, which will be made payable to Anna King until further order of the Board.

RE. CLAIM NO. 2208.

Eva Isabelle Craig, *Claimant.*

(March 21, 1913.)

An employe, whose occupation was that of driver's helper and a part of whose duty was to care for horses used in the business in which he was employed, who is injured while taking care of such horses, is injured "in the course of his employment."

STATEMENT OF FACTS.

Jesse Craig was an employe of the Hoster-Columbus Associated Breweries Company, a subscriber to the state insurance fund. His employment

was that of a driver's helper. He was assistant to one Peter Resch, who was a driver of one of the brewery wagons of The Hoster Branch of The Hoster-Columbus Associated Breweries Company. His duty was to assist the driver generally and to take care of the horses at the place known as Hoster Branch No. 1 Barn, at which place the plaintiff received the injury which resulted in his death.

The injury to Craig happened on February 7, 1913, at 2:30 P. M., in one of the stalls of the aforementioned barn at the corner of Liberty and Front Streets in the City of Columbus. Craig was taken to Mt. Carmel Hospital and died there on March 15, 1913.

The First Notice of Injury was filed on February 11, 1913. It was not filed by Craig, but by Henry G. Kopp, City Manager of Hoster Branch No. 1 of the Hoster-Columbus Associated Breweries Company. Attached to the First Notice of Injury is a typewritten sheet purporting to contain two statements of one Frederick Frey, said to be the only witness to the accident. The first statement, made in the presence of Dr. P. D. Shriner, Henry G. Kopp and Dr. K. J. Hengst, veterinary at the brewery, was as follows:

> "Craig and I were having a friendly tussle in the stall of the horse and were pushing each other, when Craig slipped and fell under the horse. The horse then stepped on him injuring him".

The second statement made at 9:30 A. M. on the morning following the injury was made in the presence of Miss Emma Marks, Miss Emma Gielsdorf, Henry G. Kopp, Louis Ph. Hoster, General Superintendent of the Company, Dr. K. J. Hengst and Henry T. Witter, a Notary Public, and is as follows:

> "Yesterday afternoon I was walking over to get the brass polish to shine the brass on my harness and passed the stall where Craig was. When I got past the stall I heard the racket of a horse and I then ran back and Craig was under the horse. I yelled for help, and Mr. McGuigon came and pulled Craig out, but I stayed in the stall until he got him out and then tied the horse for him. I received a wound in helping him up. I was not in the stall when the horse started kicking and tramping on Craig and do not know how the trouble started."

The First Notice of Death was also filed by Henry G. Kopp, City Manager of Hoster Branch No. 1 of The Hoster-Columbus Associated Breweries Company. Paragraph 5 thereof is as follows:

> 5. "How did accident happen?"
>
> Craig and another helper by the name of Frey were having a friendly tussle in the stall of one of the horses, which Craig was looking after, when in some manner Craig fell under the horse, the horse stepped on his head and fractured his skull."

The attending physician's report contains the following statement in paragraph 7:

> 7. "Give description of injury, stating the parts injured and supposed manner of infliction, marking on the chart on the back of this report the place and extent of injury".
>
> "Compound fracture of skull involving the frontal and both parietal bones. Kicked by a horse".

The statements of Peter Resch and McGuigon are also on file. It seems that neither witnessed the injury. Resch states that the day on which Craig was injured was very cold; that they returned to the barn about 2 o'clock P. M. Resch went into the office while Craig started to unhitch the horses. He had taken one horse into the stall, removed the harness and was about to put the halter on when the accident occurred. The other horse remained hitched to the wagon on the outside at the time.

Frederick Frey left the service of the Hoster-Columbus Associated Breweries Company immediately after the injury and his whereabouts are unknown, although repeated effort to locate him has been made by our inspection department.

On March 2, 1913, at Mt. Carmel Hospital, Craig told his wife in the presence of her mother, Nellie Peer, that there was no one in the stall with him when the accident occurred. Both Mrs. Craig and Mrs. Peer say that Craig was rational when he made the statement, although it appears that he was unconscious most of the time between the date of the injury and the date of his death, there being intervals when he was rational.

The application for compensation is filed by said Eva Isabelle Craig as the widow of said Jesse Craig, there being no children. She claims, and offers proof of the fact, that she was wholly dependent upon the deceased for support at the time of his death.

The weekly wages of the deceased was $9.50, which he had been receiving for about nine months prior to his death.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

If the deceased was injured under such circumstances as warrant us in finding that the injury was incurred "in the course of employment" there should be an award in this claim, as all other jurisdictional facts exist.

It seems there was no eye witness to the accident except Frederick Frey, whose whereabouts are now unknown, and the deceased was unconscious, except at intervals, during the entire time intervening from the time of receiving his injury until his death. That his duty as employe required him to tend the horses, and that his injury was sustained by being trampled by one of the horses which it was his duty to attend, is certain. However, if we were thoroughly convinced of the truthfulness of the first statement made by Frey, we would consider it our duty to deny compensation, for the reason that if employes engaged in common employment temporarily suspend their regular work for the purpose of engaging in a "friendly tussle" and thereby sustain injury, such injury cannot be said to be incurred in the course of employment. But we can understand how the injury might easily have occurred while the injured workman was engaged in his employment, and without any fault on his part, though it might have been occasioned by the pranks of Frederick Frey. After endeavoring to get all the information possible to obtain through the medium of our inspection department, and after considering all the facts carefully, we have concluded that the deceased employe met his death in the course of employment, and award will be made accordingly.

RE. CLAIM NO. 2293.

EMMA HOFFMAN, *Claimant.*

(April 14, 1913.)

1. Whether a woman whose husband is living is dependent in any degree for support on her grown son is a question of fact, and there is no presumption in favor of such dependency.

2. Where a father, mother and grown son constitute a family, and both father and son are wage earners, and both contribute to the family fund, the son being considered as one of the family and not as a boarder, the mother may be partially dependent upon her son for support.

STATEMENT OF FACTS.

Lewis Hoffman was on the 12th day of February, 1913, an employe of The Klotz Machine Company, of the City of Sandusky, a subscriber to the state insurance fund, in whose employ he had been since the year 1904. On said date he was working at an emery wheel which burst into equal halves, one of which struck him above the left eye causing a compound fracture of the skull. He died as the result of his injury on February 14, 1913. He left no widow or children surviving him. He was 32 years of age, had never married and lived with his father and mother in the City of Sandusky, the three constituting the family.

The claim for compensation was filed by Emma Hoffman, his mother, who claims to have been partially dependent upon him for support at the time of his death. His father, Daniel Hoffman, has filed a waiver in which he disclaims dependency and waives any claim to participation in the state insurance fund on account of being a dependent in any degree for support upon his son at the time of his death.

The average weekly wage of the deceased employe is stated in the employer's affidavit to have been $12 per week, and that he had been receiving such weekly wages for over two years last past. The facts as to the family relations as gathered from all of the proofs on file, including the report of our Chief Inspector, seem to be about as follows:

Lewis Hoffman, the deceased, and his father and mother lived together as a family in the City of Sandusky, in which city they had lived all their lives. The father was at the time of his son's death regularly employed at a weekly wage approximating $12.50. They owned the home in which they resided and were thrifty and industrious people. The deceased lived with them at the time of his death and it was his custom to give his mother a part of his weekly wages, estimated by her as about $8 per week. He also carried policies of insurance in three different companies, totaling approximately $1,600. In each instance the mother was named as the beneficiary. The mother was herself engaged in no gainful occupation.

In an affidavit filed in support of her claim by Emma Hoffman, the mother, the following questions and answers appear:

Q. State the name and age of your husband, if living.

A. Daniel Hoffman; age 57.

Q. Do you or your husband own any real estate? If so, state the location and value of same.

A. Homestead at 412 Campbell Street, Sandusky, Ohio; value $1,600.

Q. Are you engaged in any gainful occupation? If so, state the kind of employment and wages earned.

A. No.

Q. Is your husband engaged in any gainful occupation? If so, state the kind of employment and wages earned.

A. Employed as machine hand at about $12.50 a week.

Q. Have you or your husband any income other than personal earnings as above stated?

A. No.

Q. Did Lewis Hoffman, deceased, reside with you and your husband at the time of his death?

A. Yes.

Q. If the last answer is in the affirmative, how long has said Lewis Hoffman resided with you?

A. All his life.

Q. Was said Lewis Hoffman considered and treated as a boarder or member of the family?

A. Member of the family.

Q. State the average weekly amount contributed by said Lewis Hoffman to yourself for the six months immediately preceding his death, if any.

A. Seven or eight dollars a week. Other money in small amounts as needed.

Q. Were such contributions made in pursuance of any contract for board or lodging?

A. No.

Q. State fully all the facts and circumstances in connection with the contributions or payments made to you or your husband by said Lewis Hoffman which are not fully disclosed by the preceding questions and answers. Answer fully.

A. I received something from him each week, and if I needed money for extra expenses he always helped me as much as he could.

By the Board:— (Opinion by Yaple; Duffy, Chairman, concurs). All of the jurisdictional facts authorizing an award appear in this claim unless it be the question as to whether the deceased employe died leaving persons dependent upon him in any degree for support.

General Code, Section 1465-67 (Sec. 28 of the Workmen's Compensation Act of 1911, 102 O. L. 524) is as follows:

"In case the injury causes death within the period of two years the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the insurance fund shall be limited to the expense provided for in sections 23 and 24.

2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wage and to continue for the remainder of the period between the date of the death and six years after the date of the injury, and not to amount to more than a maximum of thirty-four hundred dollars, nor less than a minimum of one thousand five hundred dollars.

3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent of the average weekly wage and to continue for all or such portion of the period of six years after the date of the injury, as the board in each case may

determine, and not to amount to more than a maximum of thirty-four hundred dollars."

The claim is made by the mother of the deceased that she was partially dependent upon her son for support within the meaning of paragraph 3 of the foregoing section.

We have had occasion to consider the application of this section on a number of occasions. In *re Claim No. 41, Laura M. Shaffer et al., claimants,* decided by us on June 14, 1912, we gave the question very careful consideration. That was a claim in which a widow and a minor child 20 months of age claimed to be wholly dependent for support upon the husband and father, who had lost his life in the course of his employment. At the time of his death he was not living with or supporting either his wife or child, although some effort was being made by the officers of the Humane Society, at the instance of his wife, to compel him to maintain the child. In that claim we concluded, after making a very extensive examination of all the available authorities, that the question of dependency was usually a question of fact, but that under the laws of this state there is a presumption, though rebuttable, that the wife and minor children are dependent upon the husband and father for support.

We are quite sure, however, that no such presumption exists in favor of a mother being dependent upon a grown son for support, and before payment of any money from the state insurance fund is authorized in any such claim it must be made to appear as a matter of fact that such dependency existed at the time of the death. That the deceased and his father and mother constituted a family and that the decedent contributed a portion of his earnings to the family fund is evidenced by statements of the claimant and confirmed by statements of the employer and by the investigation made by our inspection department. There is also no doubt that Danial Hoffman, the husband of the claimant, was a wage earner regularly employed and that he applied his earnings to the support of himself and family and to the purchase of a home, in which they resided.

Under such circumstances can the mother of the decedent be said to have been partially dependent upon the deceased for support at the time of his death?

It may be said in answer to this question that inasmuch as the husband of the claimant was a wage earner and devoted his earnings to the support of his family, that the contributions made by the decedent to the family fund were unnecessary, and that the family would have been able to exist without such contributions; that he might be regarded simply as a boarder contributing and paying to his mother such an amount as would be his fair share of the household expenses, and if the amount contributed by him exceeded what would be his fair share of such expense the excess merely enabled the family to live a little better than would have been possible on the earnings of the head of the family alone, but that such contributions would not make his mother a dependent within the meaning of the act. Such an argument is persuasive but not convincing, for it seems to us that the fact is clearly established that the decedent did make weekly contributions to the family fund — not in pursuance of any contract or agreement to pay his portion of the family expenses — but voluntarily, so that we think the mother may be said to have depended upon him and to have looked forward to the continuation of such payments. She has therefore sustained a financial loss on account of his death, and the compensation act exists for the purpose of providing compensation for such resulting financial loss.

We find that the English courts have adopted the view above stated as to the question of dependency in their construction of the workmen's compensation act of that country. The English act provides in substance that compensation shall be paid to dependents of the killed workmen, and defines "dependents" as

> "such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, etc."

It will be seen that there is very little similarity between the language of the English act and of our act. In the English act the recipient of compensation must be "dependent" upon the "earnings" of the workman, and must also be a member of the workman's family. In our act it is only necessary that the recipient of compensation be "dependent." However, it seems to us that the same principle is involved in our act as in the English act.

In *Hodgson vs. Owners of West Stanley Colliery, 3 B. W. W. C. 260,* decided by the House of Lords on March 3, 1910, a claim of compensation was made under the following circumstances:

Two sons of a workman, who were living at home, gave all their earnings to their parents, and these earnings, together with the earnings of the father, formed a common fund out of which the whole family of ten — there being six other children and the mother who were not earning wages, was maintained. The father and the two sons earning wages were killed in the same accident. It was held that the widow was dependent on the earnings of her husband and also of her two sons, being partly dependent upon each. The Court of Appeals had rejected the claim for compensation on the theory that the wife was presumed to be wholly dependent upon her husband for support and could not therefore be considered as being dependent in any degree upon her sons. Lord Loreburn, L. C., who delivered the opinion of the House of Lords, after disposing of other objections said on the question of dependency:

> "The second objection, when analyzed is as follows: It was argued that the mother was, in the eye of the law, wholly dependent upon her deceased husband, and, being so, could not possibly be in any degree dependent upon her two deceased sons; for that would involve a logical contradiction. This supposed doctrine of law was, to begin with, presented to your lordships as an inexorable rule. Later on, Mr. Mitchell-Innes so far unbended as to admit that it might be only a rebuttable presumption. But when asked if the presumption could be rebutted by conclusive proof that it was diametrically opposed to the fact as here, he would not admit that that it could be so rebutted. How a rebuttable question could be better rebutted I really do not know. In this argument I am told that I am by law required to confirm something as the truth which every one knows to be entirely false. The short answer is that the law requires no such thing. There are such things as legal fictions, which have a peculiar history of their own; but this is not one of them. The mother was not in law wholly dependent on her deceased husband. She and her family were dependent upon those who supplied them with the means of subsistence, namely, in the present case, her husband and each of her two deceased sons."

So that it would appear that our conclusion on this subject is supported by quite respectable authority.

There is another question in this claim which we have considered and that is as to whether the fact that the deceased carried life insurance policies in which the claimant was named as beneficiary should have any bearing on the question of dependency. It will be noted that the section of the act under consideration requires dependency to exist "at the time of the death". In other words, we are to determine the question according to facts in existence at that time. This we think would necessarily include our consideration of facts preceding the death in order to determine as a matter of fact whether the claimant was dependent at the time of the death, but would preclude consideration of any facts or circumstances arising so-incident with the death or subsequent thereto. The fact that such insurance policies were carried by the decedent would not be evidence that the claimant was dependent upon him for support at the time of his decease. It would only be evidence of his intention to make some provision for her in the event of his death. But we think that if the evidence was conflicting as to whether he was contributing anything to the support of his mother during his lifetime, that the fact that he was carrying policies of life insurance in which she was named as the beneficiary would be considered, and would reflect in some degree on his attitude on the matter of supporting his mother. But no such conflict of testimony exists in this claim.

In *re Claim No. 1013, Harriet H. Horn, Claimant,* the claimant claimed to be wholly dependent upon her deceased husband at the time of his death. The deceased husband was the recipient of a pension from the United States Government on account of military services, which together with his earnings as a workman constituted a fund from which himself and the claimant were supported prior to his death. The pension ceased upon his death. There is this difference between the Horn claim and the claim under consideration. In that claim the pension was received and used in support of the claimant during the lifetime of the deceased. In the claim under consideration the claimant neither derived nor expected to derive any benefit from such policies of insurance during the lifetime of the deceased. On the contrary, the fact that he carried such insurance probably rendered his contribution to the family fund smaller than it otherwise would have been. Any benefit derived by the claimant from such insurance was derived after his death. In the Horn claim we concluded that the pension received by the deceased during his life could not be considered in ascertaining the average weekly wage or in determining the amount of compensation. Though the questions are not identical by any means, we think that the fact that the decedent in the claim under consideration carried life insurance policies is not a determining element in the question of dependency and can only be considered as reflecting upon the attitude of the decedent toward the claimant, if at all, and has no bearing whatever in determining the average weekly wage or the amount of compensation.

We find that the claimant was partly dependent upon the deceased at the time of his death, and the amount of compensation will be fixed at $5.00 per week until further order of the Board.

RE. CLAIM NO. 3483.

WILLIAM MILLER, *Claimant.*

(April 18, 1913.)

A workman engaged in the work he was employed to perform was bitten by a dog.
HELD: That he was injured in the "course of employment" and that he is entitled to compensation for the resulting disability.

STATEMENT OF FACTS.

The claimant, William Miller, was employed by The Herancourt Brewing Company, of Cincinnati, as a driver of a beer wagon, his duty being to deliver beer in barrels to retail liquor dealers. His employer is a subscriber to the state insurance fund.

On March 27, 1913, claimant was engaged in delivering beer to the customers of his employer, the place of business of one of whom, one Wade, was located in a portion of the city partially submerged by the high waters then prevalent, the cellar of the premises being flooded. When Miller called at Wade's premises he was told of the flooded condition of the cellar and requested to deliver the beer to the side or back yard, which he did, and while so doing was bitten by a bull dog. His "First Notice of Injury" states, with reference to the accident: "Opening gate to put beer in side yard dog grabbed hand and bit back of right hand". His application is to the same effect. His attending physician's report states that he "reached through a hole in a gate to unhook fastening and was bitten by a bull dog which he was unable to see as the fence was too high to look over".

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur).

Under the employers' liability acts there would not be the slightest suggestion of liability on the part of the employer for the injury sustained by the claimant. He was bitten by a dog which did not belong to his employer but to another person and while on the premises of the owner of the dog, so that there is nothing to suggest any negligence on the part of the employer. But under the terms of the workmen's compensation act there need to be no negligence on the part of the employer to entitle the injured workman to compensation. By the terms of the act he is entitled to compensation for disability resulting from injury sustained "in the course of employment", provided such injury was not purposely self inflicted. It is apparent that the injury in this instance was not personally self inflicted. The only question then is as to whether it was incurred in the course of employment. It appears that the claimant was employed as the driver of a beer wagon, his duty being to deliver beer to retail dealers in the City of Cincinnati. It was usual in delivering the beer for the claimant to place the same in the cellar or basement on the customer's premises. On the day of the claimant's injury a great part of the City of Cincinnati was submerged by high waters and the basement of the customer to whom the claimant was making the delivery when he received his injury was flooded, and he was requested by the customer to place the barrels in the back yard. This he proceeded to do, and while attempting to gain entrance to the yard was bitten on the hand by a bull dog. It does not appear to us that the

compliance of the claimant with the request of the customer to place the beer in the back yard was such a departure from the course of employment as would warrant us in denying compensation. As a matter of fact we do not consider it as a departure at all, and compensation will be awarded in accordance with the facts.

RE. CLAIM NO. 1320.

CHARLES EBNER, *Claimant.*

(May 12, 1913.)

An employe sustained an injury in the course of his employment resulting in temporary total disability. Before he had completely recovered from the injury he suddenly became insane and was committed to an asylum. The wound received had healed at the time of his becoming insane and there was nothing to indicate that the insanity resulted from the wound.

HELD: That the disability resulting on account of the insanity did not result from an injury sustained in the course of employment.

STATEMENT OF FACTS.

Charles Ebner was on the 17th day of December, 1912, an employe of The Hinde & Dauch Paper Company, of the City of Sandusky, in whose employ he had been for about two years at a weekly wage of $15. Said company was at the time a subscriber to the state insurance fund.

On said December 17, 1912, at 9:30 A. M., the claimant was injured by running the wrist of his right hand into a nail that extended out on a truck. He did not consult a physician until December 21st at noon. He was treated by a physician both at the physician's office and at his home until January 1, 1913, on which date, without any warning he rapidly developed a delirium which took on the form of acute mania. He became so violent that he had to be romoved to the county jail. On the same day he was committed to the Toledo State Hospital by the Probate Judge of Erie County. The facts show that the claimant at the time of the injury was 52 years of age.

The abstract of the case certified to this department by the Toledo State Hospital is as follows:

> "Patient, on admission to the hospital January 7, 1913, was a well developed, well nourished male adult aged 52 years. Since coming to the hospital he has been confined to his bed and has had to be restrained, is very violent and quarrelsome, talkative, talks incoherently, repeating sentences and words. He refused food for about five days but at the present time is eating well. He sleeps with the aid of night draughts.
>
> Personal History. — His mental condition is such as reliable history cannot be obtained. At the present time patient is confined to his bed. Head and neck negative. Argyl Robinson pupil present. He has a wild, anxious expression. Romberg sign is negative. The pateller reflexes are absent. No babinski. Chest — Heart sounds normal. Pulse fast, feeble. Breath sounds normal. Abdomen negative. He has vericose veins on lower part of right leg. Slight tibula scars on left shin. Otherwise negative. According to medical certificate the cause of his insanity was worry and grief. His habits have been good. This is his first attack. Duration four days. He did not

attempt or threaten homicide or suicide. Patient talks incoherently and in a rambling manner."

The proof on file shows that the claimant is a man of good moral habits, industrious and temperate. He had been in the employ of The Hinde & Dauch Paper Company for about 2½ years. Prior to that time he had been a member of the police department of the City of Sandusky, losing his position through change of administration. A year and a half ago he lost a son by drowning but he never seemed to brood over these misfortunes. His father died at the age of 38 but we have been unable to ascertain the cause of his death. His mother died at the age of 77. The rest of his immediate family are living with one exception, viz., a brother who was committed to the Toledo State Hospital about 17 years ago and died after having been there less than a year. The medical testimony is to the effect that the insanity of the claimant was not caused by the injury to his hand. The claimant was discharged from the Toledo State Hospital as cured of his insanity on April 3, 1913, and returned to work for The Hinde & Dauch Paper Company on April 21, 1913.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

The question to be determined in this claim is whether the claimant is entitled to compensation during the period of his insanity. That he was injured in the course of his employment and that the injury resulted in a disability clearly appears. But it does not appear that the insanity and the resulting disability was caused by the injury. Thus we have two periods of disability — one resulting as a direct consequence of the injury and the other resulting from the insanity. If the insanity resulted from the injury the claimant is then entitled to compensation for the whole of both periods. If the insanity did not result from the injury, then he is only entitled to compensation for the disability directly following the injury.

In cases of this kind the question is, "Was the disability the result of the injury?" It is not sufficient to inquire as to whether the disability was the natural or probable consequence of the injury, for it is well known that many trivial injuries result in serious and unexpected consequences while men frequently recover from injuries which in the ordinary course of events would result in death. The question to be determined is whether as a matter of fact the condition of the claimant resulted from the injury or whether his condition was solely the result of some new cause intervening subsequent to the injury. While we are unable to understand how such a slight injury could produce insanity, yet we appreciate that the determination of such questions is for men skilled in the science of medicine, and resort must be had to medical testimony to determine whether from a scientific standpoint insanity could have been caused by the injury. The statements of the physicians all agree with the opinion of our Chief Medical Examiner, which is to the effect that there is nothing in the history of the case to indicate that the injury was in the slightest degree the cause of the insanity.

Such being the conclusion an award will be made only for the disability resulting from the injury to the claimant's hand, and an award will be denied for the disability subsequent to his commitment to the Toledo State Hospital as an insane patient.

RE. CLAIM NO. 3514.

R. V. PHILLIPS, *Claimant.*

(May 15, 1913.)

An employe, after completing his day's work, and while still on his employer's premises, was injured while going from the locality where he was doing his work to the office of the paymaster to obtain his pay, the traversing of that portion of the premises on which the injury occurred not being forbidden by the rules or direction of the employer, and the injury not being purposely self-inflicted.

HELD: that the injury was sustained in the "course of employment" and the injured employe is entitled to compensation.

STATEMENT OF FACTS.

The claimant, R. V. Phillips, was from the 7th day of January, 1913, to the 22nd day of March, 1913, an employe of Lima Locomotive Corporation, of Lima, Ohio. Said corporation was on said 22d day of March, 1913, a subscriber to the state insurance fund, being Risk No. 365, Class 10, Sub Class 100.

On said 22d day of March, 1913, at 4:30 o'clock P. M., the same being Saturday, the claimant at the close of the day's work traveled from the point on the premises of the employer where he had been engaged at labor on and over the employer's premises to a part thereof at which it was customary for the claimant and his fellow employes to receive their pay, said 22d day of March being pay day. The proof on file does not disclose that the claimant in traveling from the place where he was engaged at work to the place of payment of his wages, traversed any portion of the premises actually forbidden to be traversed by the rules and regulations of the company. While so on his way to the paymaster's office he stepped on a casting which rolled and caused him to fall as a result of which his shoulder was dislocated. There is nothing to indicate that the injury was "purposely self inflicted". He returned to work on April 14, 1913, re-entering the services of Lima Locomotive Corporation.

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur).

The sole question presented in this claim is whether the claimant was injured "in the course of employment".

General Code, Section 1645-59 (Sec. 21 of the Workmen's Compensation Act of 1911, 102 O. L. 524) is as follows:

> "The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the premium applicable to the classes to which they belong, that have been injured *in the course of their employment,* wheresoever such injury has occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued".

If the section quoted is so construed as to require the injured employe to be engaged in the actual performance of the labor to be done in pursuance of his contract of employment, then it is clear that the claimant is not entitled to compensation. But if the words, "in the course of * * * *

employment" are to have a more liberal interpretation, so as to include all acts of the employe that may reasonably be said to be done in pursuance of the contract of employment, the claim is presented in a different light.

The act as a whole is in derogation of the common law, but the particular section under consideration is remedial in its nature, and therefore should receive a liberal construction.

The decisions of the courts in their interpretation of the common law and the employers' liability acts are of little help to us, except as they relate to questions concerning the "scope of the employment", as we are not concerned with the questions of "negligence", "contributory negligence", "assumption of risk" and the "fellow servant rule". As one of the essential requirements for recovery of damages under both the common law and all employers' liability acts is that the injury be sustained by the employe while in the "scope of employment", as it is usually expressed, and as under the compensation act it is essential that the injury be sustained in the "course of employment", the decisions of the courts on this question should be taken as authority, especially if by adhering to them the manifest purpose of the act to provide compensation in all cases of injury or death where the injury to the employe occurs while in the course of his employment, is secured.

The rule as gathered from the decisions of the courts seems to be that where an employe is injured when not actually at work, and when in a place where he has no right to be, or leaves his employment temporarily for some private purpose, and not his employer's business, he is not within the line of his duty at such time. But the rule is different where there is merly a temporary cessation of the work, or where the injury is received while on the employer's premises before commencing or after quitting work, or at the noon hour. The rule is well stated by Judge Bailey in his valuable work on personal injuries in the following language:

> "The general rule is that the relation of master and servant exists only when one in the general employ of the master is in the performance of duties of the master. However, it is a matter of common knowledge that, as to employments by the day, it is not required that the servant shall be actually employed every moment of the time. Different causes necessarily require a suspension of his work for a time. The great weight of authority is to the effect that the relation of master and servant is not suspended from the time a laborer arrives upon the premises and becomes subject to the order and control of the master until he quits for the day." *Bailey on Personal Injuries,* Sec. 26.

The following cases support the general rule as above stated: *Virginia Bridge & Iron Co.* vs. *Jordan,* 42 So. 73; *Birmingham Rolling Mill Co.* vs. *Rickhold,* 143 Ala., 115; 42 So. 96; *Woodward Iron Co.* vs. *Curl,* 153 Ala. 215; 44 So. 969; *Abend* vs. *Terra Haute & I. R. Co.,* 111 Ill., 202; *Evansville &c. R. R. Co.* vs. *Maddux,* 134 Ind. 571; *Parkinson Sugar Co.* vs. *Riley,* 50 Kan., 401; 31 Pac. 1090; *Boldt* vs. *New York Central R. R. Co.,* 18 N. Y., 432; *Ewald* vs. *Chicago & N. W. R. Co.,* 70 Wis., 420; *Riley* vs. *Cudahy Packing Company,* 82 Neb. 319; 117 N. W., 765; *Cleveland, C. C. & St. L. R. Co.* vs. *Martin,* 13 Ind. App., 485; 41 N. E. 1051; *Broderick* vs. *Detroit U. R. S. & D. Co.,* 56 Mich., 261; 22 N. W. 802; *Helmke* vs. *Thilmany,* 107 Wis. 216; 83 N. W. 360; *Boyle* vs. *Columbian Fireproofing Co.,* 182 Mass. 93; 64 N. E. 726; *Adams & West* vs. *Iron Cliffs Co.,* 78 Mich. 271; *McDonald* vs. *Simpson & Crawford,* 100 N. Y. Supp. 269.

An act of Congress approved May 30, 1908, entitled, "An Act granting to certain employers of the United States the right to receive from it compensation for injuries sustained in the course of employment", provides for the compensation of "any person employed by the United States as an artisan or laborer in any of its manufacturing establishments, arsenals, or navy yards, or in the construction of river and harbor or fortification work or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, or in hazardous employment under the Isthmian Canal Commission, * * * * injured in the course of such employment". 35 Stat. 556. The act is administered by the Department of Commerce and Labor and numerous claims involving the question as to whether the applicant was injured "in the course of employment" have been considered and determined, the opinions of the Solicitor for the department (Hon. Charles Earl), covering the period from August 1908 to August 1912 being published by the United States Government under the title, "Workmen's Compensation under Act of May 30, 1908. Opinions of Solicitor for Department of Commerce and Labor". On page 218 of the above mentioned volume appears the opinion of the solicitor in: *re. claim of William P. Fahey, No. 155,* in which the following language is used:

> "I have examined the above claim submitted to this office with special reference to the question whether the accident occurred in the course of the claimant's occupation.
>
> The claimant in the case states that he was 'coming into the shop' when he stumbled against a piece of iron and fell against a plate of iron that was leaning against the planer; that the iron was bent up 5 or 6 inches, and that he cut the palm of his right hand.
>
> The certificate of the superior officer of the injured employe sets forth that 'while leaving the shipfitter's shed, building No. 84, after quitting work at 5 P. M., October 1, 1908, he tripped and in attempting to keep from falling took hold of a sharp plate edge, cutting palm of hand'. The occurrence is described in the same way on the "Immediate report of accidental injury" (Form C. A. 1). That the claimant sustained the injury complained of is not denied, and that it has incapacitated him from duty for more than 15 days is certified by the attending physician.
>
> From the description given, while it is by no means clear, it is inferred that the claimant had quit work in the shed and had to go to the shop to do something necessary or, at least, proper for him to do before he was finally prepared to leave his employment for the day. He was not guilty of negligence or misconduct, and the injury complained of occurred while he was still on the premises of his employment. That he was not actually engaged upon the work for which he was employed would not take him without the scope of his employment".

Section 1 (1) of the English Workmen's Compensation Act of 1906 (Edw. 7 c. 58) is as follows:

> "If in any employment personal injury *by accident,* arising *out of* and *in the course of employment* is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule of this act".

A comparison of the above section of the English act with the section of the Ohio law under consideration discloses enough similarity to warrant the conclusion that the framers of the Ohio act were familiar with the provisions of the English act and with the interpretation thereof by the English courts, and that the elimination of many questions growing out of that act was sought by the more comprehensive language employed in the Ohio act. It will be noted that in order that an injured workman may be entitled to compensation under the English act his injury must have been caused "by accident", and also that it must arise "out of" the employment as well as "in the course of employment". It is obvious that many injuries may arise "in the course of employment" that do not arise "out of" the employment. In other words, there are many injuries which a man may receive "in the course of his employment" that are not incidental to and so do not grow "out of" the employment itself. It is also possible for injuries to be sustained by workmen "in the course of employment" that cannot be said to be "accidental" in their nature.

The above section of the English workmen's compensation act has been construed in many cases involving claims for compensation, and many claims have been denied where the injury was received "in the course of employment" because they did not also arise "out of" the employment, or because they were not "accidental" in their nature. Thus many of the English cases in which compensation has been denied, where the injury was clearly sustained "in the course of employment", could not be followed in interpreting the Ohio act, as it is more liberal in its scope and permits of compensation being paid under circumstances under which there would be no liability to pay under the English act. However, as it is necessary under the Ohio as well as under the English act that the injury occur "in the course of employment" in order to give rise to a claim for compensation, the decisions of the English courts as to the meaning of the words, "in the course of employment", may be valuable in construing the Ohio act in analogous cases. It has been held in a number of cases that under certain circumstances, the employment may be said to commence before the workman begins his work and to continue some time after he has ceased working. Thus the court said in *"Smith* vs. *South Normanton Colliery Co., Ltd.,* 1 K. B. 204, 5 W. C. C. 14:

> "While the workman is physically engaged in making his exit from the place in which he is employed I think the employment would still continue for the purposes of the act, and the workman would still be entitled to the protection thereby given. But although the employment may continue during the interval which is necessarily occupied by the workman, after his suspension from work, in getting off his employer's premises, there must come a time, after the suspension of a workman, when he can no longer be said to be engaged in the employment in such a way that, if an accident happens to him, it can be said to arise "out of" and "in the course of the employment". It appears to me to be a question of fact where the line is to be drawn, but there must be a time beyond which the liability of the employer can not continue".

Whether the injury was received in the "course of employment" would seem to be a question of fact to be determined by the nature of the contract of employment, the nature of the work in hand and the facts and circumstances surrounding each particular case of injury from which a claim arises; or, at most it is a mixed question of law and fact.

In the case of *Lowry* vs. *Sheffield Coal Co., Ltd.*, 24 T. L. R. 142, 1 B. W. C. C. 1, it was held that where a miner left his work at 5 A. M. on Saturday morning and at 12:30 P. M. of the same day went to the office to procure his wages, and was injured while on his employers's premises, that he was injured "in the course of his employment" and entitled to compensation, the court saying:

> "In my view it was just as much part of his employment to go to the pay office on that day at that hour as it was to go down the pit on the following Sunday night".

In the claim under consideration, it seems clear, both upon principle and authority, that the claimant was injured "in the course of employment" and is therefore entitled to compensation.

RE. CLAIM NO. 3493.

JAMES L. CHASE, JR., *Claimant.*

(May 19, 1913.)

An employe's duty was to drive a light delivery wagon drawn by a horse which was used in making deliveries, obtaining supplies, etc., and when not so employed to work in the shop of the employer. It was also a part of his duty to take care of the horse which he drove, and in so doing to take the horse and wagon to his home in the suburbs on Saturday afternoon in order to give the horse Sunday pasture, and to drive him back to the city on Monday morning. He was injured on a Monday morning while caring for the horse, preparatory to driving to the city.

HELD: That the injury was received in the course of employment.

STATEMENT OF FACTS.

On March 31, 1913, the claimant, J. L. Chase, Jr., was in the employ of the Chase Machine Company, of Cleveland, Ohio, which company was at the time a subscriber to the state insurance fund, being Class 10, Sub Class 103, Risk No. 168.

On said 31st of March, 1913, the claimant sustained an injury which resulted in a temporary disability lasting until April 29, 1913, on which day he resumed his employment at the same wages. He had been in the employ of The Chase Machine Company for seven years, and for three years prior to his injury had been receiving $18 per week. The duty of the claimant was to drive a light delivery wagon drawn by a horse which was used in making deliveries containing supplies, etc., and when not so employed to work in the shop of his employer. It was also a part of his duty to take care of the horse which he drove, and in so doing to take the horse and wagon to his home in the suburbs on Saturday afternoon in order to give the horse Sunday pasture, and to drive him back to the city on Monday morning. The injury to the claimant consisted of a dislocation of his right shoulder which occurred on Monday morning when he had harnessed his horse and was leading him to the wagon for the purpose of hitching him thereto, when the horse stepped in a soft spot on the turf and stumbled and fell, the claimant being thrown to the ground and injured in his effort to hold the horse on its feet.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

The fact of employment, the average weekly wage, the fact of injury and the duration of the disability all appear to be quite clear in this claim. The only question to be determined is whether the claimant was injured in the course of his employment.

We have recently had occasion to go into this subject extensively in *re claim No. 3514, R. V. Phillips,* claimant, and while the facts presented in this claim are not identical with those of the Phillips claim, we have less difficulty in arriving at a conclusion. In the Phillips claim the injury was sustained after stopping work, while still on the employer's premises, and while going to the paymaster's office to receive his wages. In the claim under consideration we think the injury was sustained while actually in the performance of services under the terms of his contract; that is, the injured employe was actually in the service of his employer performing actual work at the time of the injury and was therefore injured in the course of his employment as contemplated by General Code, Section 1456-59 (Sec. 21 of the Workmen's Compensation Act of 1911, 102 O. L. 524) and is entitled to medical attention and compensation in accordance with the provisions of the act.

RE. CLAIM NO. 4268.

A Costello, *Claimant.*

(May 19, 1913.)

An employe employed at a yearly salary, who sustains an injury resulting in *temporary disability only,* is not entitled to compensation where in accordance with the terms of his contract no deduction from his salary is made on account of his loss of time.

STATEMENT OF FACTS.

The claimant was injured on the 16th day of April, 1913, and returned to work on the 29th day of the same month. He was employed by The Upson Nut Company, of Cleveland, Ohio, which company was at the time a subscriber to the state insurance fund, being Class 15, Sub Class 2, Risk No. 1213.

The claimant had been in the employ of The Upson Nut Company for about six years prior to the injury and for about twenty-one months prior thereto had been employed at an annual salary payable in weekly installments, and by the terms of his contract no deduction was to be made for loss of time occasioned by temporary injuries, and none was in fact made. The injury consisted of a lacerated wound one inch in length on the outer edge of the left eye brow, the claimant receiving a severe shock from which he was rendered unconscious for a few minutes. Medical attention was rendered and two stitches taken and an antiseptic dressing applied. No statement of the medical services appeared in the proof on file, it appearing that the employer paid for such services.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

In this claim the fact of injury, the resulting loss of time and the average weekly wage is sufficiently clear, the sole question being whether the claimant

is entitled to compensation for his injury, in view of the fact that he was working under a contract of employment providing for an annual compensation, without deduction for loss of time occasioned by an injury resulting in temporary disability, it appearing further that the claimant has been fully paid in accordance with the terms of his contract for the period of time covered by his disability.

The act contemplates compensation covering the impairment of the earning capacity to the extent of two-thirds thereof, exclusive of the first week of the disability. Section 1465-65, General Code (Sec. 26 of the Workmen's Compensation Act of 1911, 102 O. L. 524). As the injury to the claimant did not result in any impairment of his earning capacity, and as the act does not contemplate compensation on account of the injury itself or the pain or the suffering resulting therefrom, we do not think the claimant is entitled to an award and his claim will therefore be denied.

RE. CLAIM NO. 4204.

MARGARET EVANS, *Claimant.*

(May 29, 1913.)

An employe who was employed as a night watchman on the premises of his employer and who, while in the discharge of his duty as such night watchman was shot by a burglar from the effects of which he died, was killed in the course of employment, and his dependents are entitled to compensation.

STATEMENT OF FACTS.

Clarence B. Evans was on the 20th day of March, 1913, in the employ of The Champion Coated Paper Company, of Hamilton, a subscriber to the state insurance fund. His duties were to act as night watchman at the factory building of his employer located in said city. On said date, at about the hour of 11:30 P. M., while he was engaged in patrolling the premises he encountered a masked man who ordered him to throw up his hands. He didn't comply with the demand and was shot, the bullet lodging in the arm, breaking the left humerus at the surgical neck of the bone. He died on April 25, 1913. Prior to his death it became necessary to amputate the arm and the immediate cause of death is given as *septic meningitis.*

The deceased left surviving him Margaret Evans, his widow, aged 37 years, with whom he was living in the City of Hamilton at the time of his death and who appears to have been wholly dependent upon the deceased for support. The deceased at the time of his death had been in the employ of The Champion Coated Paper Company for about three years, but had only been acting as night watchman for about one month prior to the time of receiving the gun shot wound which resulted in his death. At the time of and for some time previous to his injury, he was receiving a weekly wage of $14.00.

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur).

We have practically no difficulty in finding that the injury to the decedent in this claim was incurred in the course of his employment and that his death resulted from the injury. Even if the law required us to find that the injury resulted from one of the hazards of the employment — which we do not under-

stand to be necessary — it would appear that the hazard of being shot by a burglar or other night marauder is one of the hazards or dangers to which a night watchman is subjected, but it is clear that he was killed in the course of his employment and that his injury was not purposely self-inflicted, and that is all we are required to find. The fact that the immediate cause of death was *septic meningitis* (blood poisoning) does not prevent us from finding that he died as a result of receiving the gun shot wound. It is true that under ordinary conditions he would have recovered from such a wound, but it is also true that had he not had the wound blood poisoning would not have set in and death would not have resulted.

We find that all of the jurisdictional facts exist authorizing us to make an award and the same will be made in favor of the widow, payable in accordance with the rules of the Board.

RE. CLAIM NO. 3834.

A. V. MITCHELL, *Claimant.*

(June 2, 1913.)

An employe after quitting his day's work, instead of leaving his employer's premises by the usual means of egress remained upon the premises, and went to a part thereof remote from the part where he was employed, for the purpose of seeing an employe of another department of his mployer on some personal matter of interest to himself, and while so doing was injured.

HELD: That he was not injured "in the course of employment."

STATEMENT OF FACTS.

The claimant, A. V. Mitchell, was on the 12th day of April, 1913, an employe of The Milburn Wagon Company, of Toledo, a subscriber to the state insurance fund. On that day, which was Saturday, he was injured at the works of his employer under the following circumstances:

He ceased work at 12 o'clock noon, the factory of his employer not operating on Saturday afternoon. The injury for which he makes application for compensation was sustained at 12:05 P. M. The claimant was employed in the yards of the employer and there was a gate from the yard through which employes working therein entered the premises when coming to work and through which they made their exit after the completion of the day's labor, it not being necessary for the employes to go in or about the portion of the premises where the claimant sustained his injury unless directed to do so. It also appears that it was the employe's duty to deposit his time check at the gate above mentioned after his day's work was ended. On the day in question the claimant quit work at 12 o'clock, at which time his day's work was ended. Instead of proceeding to the gate above mentioned and leaving the premises by that means, he went through the factory building to see an employe who worked in the shipping room, and while on his way fell off a platform on to a railroad track and sustained a fracture of the left scapula. It does not appear that his visit to his fellow-employe in the shipping department had any connection with the service of his employer.

BY THE BOARD: — (Opinion by YAPLE; DUFFY, Chairman, and WOODHULL concur).

There seems to be no question about the injury and the extent of the disability suffered in this claim. The sole question is whether the injury was

received "in the course of employment". The facts disclose that the injury was sustained by the claimant while on the employer's premises and immediately after the hour of ceasing work on that particular day. We have recently had occasion to consider under what circumstances, if any, an employe is entitled to compensation when injured on the premises of his employer after he has actually ceased work.

In *re. Claim No. 3514, R. V. Phillips, claimant,* decided by this Board on May 15, 1913, we held that an injured employe was entitled to compensation where after completing his day's work, and while still on his employer's premises, he was injured while going from the locality where he was doing his work to the office of the paymaster to obtain his pay, the traversing of that portion of the premises on which the injury occurred not being forbidden by the rules and regulations of the employer.

In the claim under consideration it does not appear whether or not the injured employe was forbidden by the rules and regulations of the employer to be on the portion of the premises where he was injured at that particular time, but we do not think the existence or non-existence of such a rule to be of importance in the determination of this claim. It appears from the proof on file that in the ordinary course of the claimant's employment at the time of ceasing his work at noon, he would have proceeded to the gate provided for the entrance and exit of employes employed in the yard of the employer and there deposited his time check and quit the employer's premises. He did not pursue this course. On the contrary he visited another portion of the premises where his duties did not call him, for the purpose of visiting or conversing with a fellow employe engaged in another department of the employer's business.

We are inclined to give the phrase "in the course of employment" a somewhat liberal construction, and believe that an employe ordinarily should be considered as being in the course of his employment from the time he reaches his employer's premises until the time he leaves them, and so if injured at any time between the time of entering the employer's premises and departing therefrom he would be entitled to compensation, even though not actually engaged in work at the time of receiving the injury. But where during the hours of employment the employe temporarily quits the employer's premises for some purpose of his own and is injured, or where after the hours of labor and before leaving the employer's premises he goes to some other portion of the premises for such private purpose of his own and is injured, it cannot be said that he is injured in the course of his employment.

Such seem to be the facts in this claim and compensation is therefore denied.

RE. CLAIM NO. 4173.

William A. Jones, *Claimant.*

(June 4, 1913.)

The services of an employe regularly employed by a corporation were loaned to one of the officers and directors thereof to perform temporary service in the private business of such director and officer. While performing such service he was away from his employer's premises and on the premises of such director and officer, and the work was done under his direction and supervision. While performing such service the employe was injured.

HELD: That the injury was not received in the course of employment within the meaning of G. C., Sec. 1465-59.

STATEMENT OF FACTS.

On the 7th day of April, 1913, the claimant, William A. Jones, was injured by falling from a ladder while sawing a limb from a tree. He was at the time of his injury, and for some years previous thereto, employed by The Sears & Nichols Company, a corporation of Chillicothe, said company being at the time of his injury a subscriber to the state insurance fund. The Sears & Nichols Company is regularly engaged in the operation of what is commonly known as a "canning factory" wherein corn, peas, beans, berries and other fruits and vegetables are packed and marketed. The injury did not occur on the premises of The Sears & Nichols Company but at the residence of C. H. Sears, one of the officers of the company. It also appears that the claimant was not, at the time of the injury, performing any services which he was required to do in the ordinary scope of his employment as an employe of The Sears & Nichols Company but was doing some private work for said C. H. Sears, he having been directed to perform the work by an officer of the company and was paid for the time he consumed in the performance of the work by the company, the value of his time being charged by the company to the account of said C. H. Sears.

By the Board: — (Opinion by Yaple; Duffy, Chairman, and Woodhull concur).

The question presented in this claim is as to whether an employe regularly employed by a subscriber to the state insurance fund, whose services are "loaned" to a third person for the performance of a kind of work not contemplated by his contract of service and is injured while performing such work, is entitled to compensation from the state insurance fund.

In the claim under consideration there is no doubt of the fact of injury and the extent of the disability resulting therefrom. The question is, was the claimant injured in the course of his employment? General Code, Section 1465-59 (Sec. 21 of the Workmen's Compensation Act of 1911) reads as follows:

> "The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the permiums applicable to the classes to which they belong, that have been injured in the course of their employment, wheresoever such injury has occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued."

The fact that the injury was sustained away from the premises of the employer is not important, as the employe is entitled to compensation for his injury "wheresoever such injury has occurred"; but the question as to whether he was injured while "in the course of employment" is all important. While the common law principles of contributory negligence, assumption of risk, etc., are not subjects for consideration in the administration of the workmen's compensation act, we must frequently have recourse to the law of master and servant to determine under what circumstances the relation of employer and employe exists, when it is suspended or when it is terminated. That the claimant was regularly employed by The Sears & Nichols Company, and had been so regularly employed for some years prior to the date of the injury, is not questioned. That he was not at the time of his injury performing any services in the interest of the company or for its benefit is equally clear,

although it appears that he was paid by the company for the time consumed in the work in which he was engaged at the time of his injury, the same being charged against the individual for whom the work was done, who was a director and officer of the company. Did he cease to be an employe of the company during the time for which his services were lent to the individual and in the performance of whose work he was injured?

While the amount involved in this claim is small (the injury resulting in only temporary partial disability), the principle involved is important, and for that reason we have given it very careful consideration. We believe that if the claimant during all the time he was engaged in the work in the performance of which he incurred his injury was on the payroll of his regular employer and was ordered to perform the work by some officer of the company having authority, but while performing such work was under the direction and control of the person for whom the special work was being done, he was, during the time so employed, in the temporary service of that person. But if, while doing such special work he remained subject to the control and supervision of the company or some officer of the comany, in its behalf, he would then be considered an employe of the company at the time of his injury. But was he injured in the course of his employment? That is equally as important as the question as to whether he was in fact an employe, and in arriving at a determination of the question we think we should consider the provisions of the compensation act with reference to the classification of employments and the fixing of the rates of premiums of the risks of the same.

Section 1465-53, General Code (Sec. 17 of the Workmen's Compensation Act of 1911), provides:

> "The state liability board of awards shall classify employments with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same based upon the total payroll and number of employes in each of said classes of employment, sufficiently large to provide an adequate fund for the compensation provided for in this act, and to create a surplus sufficiently large to guarantee a state insurance fund from year to year."

Under the provisions of this section of the act all employers have been classified and rates of premiums fixed for each separate class. The word "employments" as used in this section has been construed to mean "industries", so that a rate of so much per hundred dollars of wage expenditure has been fixed for the canning industry; likewise rates have been fixed for every other known industry, the same being based on the hazard of the industry or the liability of employes engaged therein to sustain injury.

To illustrate, in the canning industry a rate of 65 cents per $100 of wage expenditure is the premium fixed; department stores 30 cents for each $100 of wage expenditure; while erectors of steel and iron frame structures pay a premium of $6.00 per $100 and powder manufacturers $20 per $100 of wage expenditure, so that the payment exacted from each employer is predicated upon the theory that he is contributing his equitable portion to a fund sufficiently large to compensate all employes of all employments that may be injured in the course of their employment within a given time, the amount of his contribution being determined by a consideration of the hazard of the business in which he is engaged and the amount of wages expended in such business.

Another circumstance to be considered in arriving at a conclusion is the

position of the employe in the claim here presented. He was directed to do the work in which he was engaged when he incurred his injury by an officer of the corporation employing him vested with authority to direct the work of its employes, and performed the services in consequence of such order, the person for whom the services were rendered being an officer and director of his employer.

Looking at the matter from his standpoint alone it would seem that inasmuch as he had been directed to perform this work and had been paid for its performance by his regular employer, and being injured, his right to compensation should be free from question. But this Board in the administration of its duties has three distinct functions to perform. It must properly classify and rate the many employments of the state with reference to their degree of hazard in order that each employer of the state who desires to pay his premiums into the state insurance fund for the protection of himself and the compensation of his employes shall pay no more and no less than his proper share to maintain the fund. It is also its duty to pay out to injured employes who have been injured in the course of their employment such sums as the terms of the law provide for the character of the injury sustained in each particular case and to none other; and it must at all times zealously guard the fund from exploitation.

We have considered all of these matters and our conclusion is that no uniform rule can be laid down to cover all cases of injury occurring to employes where the employers have lent their services to a third party, but to justify us in awarding compensation in such cases, if indeed compensation can be awarded in any such case, it would be necessary that the employer so lending the services of the employe retain control and direction of the mode and manner of his doing the work he was assigned to perform; otherwise, he temporarily would cease to be an employe of the regular employer and become for the time being a casual employe of the person for whom the special work was being done.

In the claim under consideration we do not think that the claimant sustained his injury under such circumstances as to be entitled to compensation. In other words, his injury was not sustained in the course of employment, and compensation will be denied.

RE. CLAIM NO. 2624.

KATHARINA SCHATZ, ET. AL., *Claimants.*

(October 31, 1913.)

1. An employe injured while on his employer's premises, though not actually engaged in the performance of the work he was employed to do, may be entitled to compensation.

2. The Consul of a foreign government will be paid compensation due to dependents residing in the foreign country whose government he represents only when he files with the Commission a power of attorney from the person entitled to receive the money, authorizing him to receive and transmit the money. Section 41 of the Compensation Act construed.

STATEMENT OF FACTS.

John Schatz was on the 25th day of February, 1913, in the employ of The Columbus Iron & Steel Company, of Columbus, Ohio, a subscriber to the state insurance fund. He was found dead between two of the boilers of

the plant, with the 4th, 5th and 6th ribs fractured; lower lobe of right lung torn through; right plural cavity filled with blood; and a scalp wound three inches long on the right side of the head. The body was discovered at 1:30 A. M., and there was no eye witness to the accident, the presumption being that he fell from a scaffold or platform about ten feet above where the body was found.

The decendent left a widow and child, the claimants, both of whom reside in Vojola, Austria-Hungary, and both of whom were wholly dependent upon the decedent at the time of his death. Evidence of the marriage has been filed showing the marriage to have taken place at Vojola, in Austria-Hungary, on February 11th, 1890. Evidence of the birth of the child on January 1st, 1897, has also been filed. The decedent came to America in October, 1912.

The average weekly wage of the decedent while employed by The Columbus Iron & Steel Company was $14.35.

A power of attorney is filed with the claim papers, signed by the claimant Katharina Schatz, designating Hon. Ernest Ludwig, Consul for Austria-Hungary, located at the city of Cleveland, Ohio, as her attorney-in-fact and authorizing any payments of compensation that may be awarded-paid to him.

By the Commission:— (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The question has been raised by the employer that the decedent was not killed while in the course of his employment. It seems that his body was found between two of the boilers and that the work he was employed to do was not in and around the boilers. At the same time it does not appear that his work was not of such a nature as to warrant the presumption that he was clearly outside of his line of duty when he met his death. Taking all of the facts into consideration, including the fact that there was no eye witness to the death of the decedent, we think we are warranted in presuming that the injury which resulted in the decedent's death occurred while he was in the course of employment. There is evidence that the decedent had been assigned to new work on the night he met his death, and it is quite probable that he went upon the platform from which he fell to eat his midnight meal and while there became dizzy from the effect of escaping gases, and fell to the ground with the result already indicated. There appears to have been no rule prohibiting employes eating their midnight meals on the premises of the employer, on the contrary this practice seems to have been generally followed with the tacit approval of the employer, so that it cannot be said, on that account alone, that the deceased did not meet his death in the course of his employment. A similar question was presented in *re Claim No. 3514 R. V. Phillips, claimant,* and we held claimant entitled to compensation.

An award of $2,736.00 is made in favor of the claimants, payable at the rate of $8.77 per week, beginning February 25th, 1913 until the full amount of the award is paid.

It is deemed just and equitable that the award be paid to Katharina Schatz for the equal benefit of herself and daughter, Katharina Schatz, and it is so ordered. (Sec. 29 of the Compensation Act of 1911.)

The sum of $109.00 is allowed for funeral expenses, payable to P. W. Cook & Sons, of Columbus, Ohio.

The Austria-Hungarian Consul claims the right to receive payment of money awarded by the Commission to dependents residing in Austria-Hun-

gary in cases where compensation is awarded on account of the death of the person upon whom they were dependent while in the course of his employment within this state. He claims this right by virtue of his office and claims that such right is determined by the provisions of the Constitution of the United States and by existing treaties between the United States and Austria-Hungary.

The Commission has given the claim of the Austria-Hungarian Consul a great deal of consideration and has referred the legal question involved to the Attorney General for an opinion, which has been rendered, and it is to the effect that the Consul has not, by virtue of his office, the right to receive payments of compensation for foreign dependents resident of Austria-Hungary, but intimates that this Commission would be justified in paying such compensation to him in all cases in which it is made to appear that he is attorney-in-fact for such foreign dependents.

But Section 41 of the Compensation Act of 1913 (103 O. L. 72-88) provides that compensation shall be paid only to injured employes or their dependents. The Commission has given a strict interpretation to the provisions of this section, for obvious reasons, and is of the opinion that the practice of making payments of compensation to attorneys-in-fact would, if adopted generally, be fraught with many abuses. However, in the class of cases under consideration, the difficulty surrounding the proper proof of the claims of dependents residing in foreign lands and the transmission of the money due them are so great, that we are strongly inclined to adopt any method of proof and payment that appears to promise the prompt disposition of such claims and to facilitate the payment of the money to those entitled thereto. Otherwise many dependents residing in foreign lands would find it difficult if not impossible to make proof of their claims, and the Commission would experience much difficulty in transmitting money to them.

The Consul is the accredited representative of his Government, so that, when armed with a power of attorney from the person entitled to receive the money directing its payment to him, we think we are justified in accepting and giving due credit to the proof offered by him, and in transmitting the money due such dependents through him.

We feel it our duty to follow the opinion of the Attorney General and the compensation will be transmitted to the dependents through the agency of the Consul, only in cases in which he files with us a power of attorney from those entitled to the money.

RE. CLAIM NO. 15193.

OTHO DEAVERS, *Claimant.*

(January 6, 1914.)

An employe, who left the premises of his employer for the purpose of posting a letter for a fellow employe, and while crossing a railroad was injured by a moving train, was not injured while in the course of his employment.

STATEMENT OF FACTS.

Otho Deavers was on the 28th day of October, 1913, employed by the Kearns-Gorsuch Bottle Company, of Zanesville, Ohio, and on that date was injured while attempting to pass between the freight cars of a moving train. The injury is described in the application in the following language: "Was

delivering mail prior to my starting time but after having reported for work. Attempted to pass between freight cars while in motion, foot slipped from the step and I fell with one foot over the rail." As a result of the accident, claimant's foot was so injured that it had to be amputated.

At the time of the injury claimant was earning $9.00 per week.

It appears that claimant reported at his employer's premises for work shortly after six o'clock A. M., the starting time at the factory being 6:30 A. M. One of the claimant's fellow workmen, with whom he worked on a machine, asked him to mail a letter for him and claimant took the letter and started to the mail box and on his way it was necessary for him to cross a railroad track on which a freight train was passing. In attempting to pass through the moving train, claimant lost his footing and fell beneath the car. The fellow workman, who requested claimant to mail the letter, was John Whittlinger, who was not a foreman, and in no way represented the employer, and the letter which claimant undertook to carry had no reference to the company's business.

BY THE COMMISSION: — (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The fact of injury and all other jurisdictional facts except the question as to whether claimant was injured while in the course of his employment, fully appear in the proof on file in this claim.

The First Notice of Injury and Preliminary Application gives the location or place where the injury happened as "crossing of First St. and B. & O. R. R.", so that this is not an instance of an employe being injured on his employer's premises after reporting for work and prior to beginning work. It appears that the claimant at the time he met his unfortunate accident, was doing an errand for a fellow employe. He was not employed to do such errands, nor did the employe who requested him to perform the service for him have any authority to issue orders to claimant. He was simply accommodating a fellow workman in a matter which had no connection with his employer's business, nor the work he was employed to do, and it seems to us that by no reasonable interpretation can the compensation law be so construed as to authorize the payment of compensation for claimant's injury.

Our conclusion is that claimant's injury was not sustained while in the course of employment, and compensation is denied.

RE. CLAIM NO. 18133.

CHARLES F. ROLL, *Claimant.*

A man employed as foreman, while in the discharge of duties he was required to perform, was shot by an employe whom he had discharged.

HELD: That the injury was sustained in the course of employment.

STATEMENT OF FACTS.

Charles F. Roll was on the 15th day of January, 1914, in the employment of The Robert F. Mackenzie Company, of Cleveland, Ohio, a subscriber to the state insurance fund.

He was a foreman in his employer's establishment and one of his duties was to discharge employes for violation of the employer's rules. On the last

named date, Roll discharged an employe named Shabelia, and as he was in the act of opening a locker to obtain therefrom some personal property belonging to Shabelia, that he might give the same to him before he left, said Shabelia drew a pistol and shot Roll in the left side, the bullet penetrating his kidney. Claimant is now in the hospital in the city of Cleveland and is not yet able to return to his work — indeed the nature of the injury is such that he may die as a result thereof.

It does not appear that the act of Shabelia was in self-defense or that he had any provocation whatever for the act of shooting.

By the Commission: — (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The only question presented in this claim, and it is an important one, is as to whether the claimant was injured while "in the course of his employment" within the meaning of Section 21 of the compensation act of 1913, the last paragraph of which provides:

> "Every employe * * * *who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1, 1914, shall be entitled to receive, either direct from his employer as provided in Section 22 hereof, or from the state insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses in case of death as is provided by Sections 32 and 40 inclusive of this act."

Heretofore we have had occasion to contrast the provisions of the compensation act of 1911 with the English compensation act and we have expressed it as our opinion that many of the decisions of the English courts under that act are inapplicable to cases arising under the compensation act of 1911 — and as to the question now before us for consideration the act of 1913 calls for the same construction as that given the act of 1911 in our decision in *Re. Claim No. 3514, R. V. Phillips, Claimant.*

However, the exact question presented in this case is one that we have not until now been called upon to decide. As by the felonious assault of a discharged workman. The assault was made while the claimant was performing a service for which he was being paid by his employer, that is, what he was doing was an incident to his employment and for that reason he was, we think, in the course of his employment.

Authorities may be found to the effect that a person injured as was claimant is not entitled to compensation, but such decisions are based upon the fact that the injury either was not the result of "accident" or that it did not grow "out of" the employment, for under the provisions of the English Act, and the acts of most of the states, the injury must not only occur "in the course of employment," but must be an "accidental" injury growing "out of" the employment. In other words, there must be an accident and the resulting injury must be one which can reasonably be said to be incident to the employment.

To illustrate, it was held in the case of *Blake vs. Head,* 5 B. W. C. C., 303, that an injury to an employe as a result of an assault made upon him by his employer was not compensable, as it was not an accident.

In *Murray vs. John Denholm & Co., 5 B. W. C. C., 496,* it was held that a strike-breaker injured by stones thrown by strikers was not entitled to compensation because the injury did not result from accident.

In *Murphy vs. Berwick, 2 B. W. C. C., 103,* a cook in the kitchen of a hotel was injured in trying to protect herself from a man who came out of the bar to kiss her and compensation was denied her because her injury did not arise "out of" the employment.

In *Collins vs. Collins,* 2 I. R., 104, a workman was ordered by his employer to protect some pipes from breakage by ruffians. One of them having been broken, the workman, in the presence and on the orders of the employer demanded payment for the damages. A quarrel ensued, the employer was struck and the workman in attempting to render his employer assistance was stabbed and killed by the ruffians and it was held that the injury did not rise out of the employment and compensation was denied.

On the other hand, it was held in *Challis vs. London & S. W. Ry. Co., 7 W. C. C. 23,* that an engineer of a railroad locomotive, who was injured by a stone thrown by a mischievous boy, was entitled to compensation because the injury resulted from an accident within the meaning of the statute. In this case, Collins, M. R., said:

> "The Legislature in framing the act, intended to provide for the risks of accident which are within the ordinary scope of the particular employment in which the workman is engaged * * *. In the present case such an accident as happened does appear to me to be an incident to the employment and a hazard attached to it."

In the case of *Nisbit vs. Rayne & Burn, 3 B. W. C. C.,* 507, (decided in 1910) it was held that a cashier employed regularly to carry wages by train to a colliery and who was shot and killed by a robber in the course of a journey was killed while in the course of his employment and that the injury resulting in his death was an accident growing "out of" the employment. In this case Cozens-Hardy M. R., who announced the decision of the court, said:

> "This appeal raises a very curious question under the compensation act. Nisbit was the cashier employed by the appellants, and in the course of his duties was in the habit of conveying large sums of money from New Castle to a colliery owned by the appellants for the payment of the wages of the colliers. While traveling in the train in the discharge of his duties, the bag of money was stolen and he himself was killed, his death being caused by shots fired from a revolver or pistol. This was obviously a criminal act whether robbery alone was intended or whether murder was the direct contemplation. The widow claims compensation by reason of her husband's death. It is contended by the employers that this was not an accident within the meaning of the act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion this contention ought not to prevail. I think it was an accident from the point of view of Nisbit and that it makes no difference whether the pistol shot was deliberately fired at Nisbit or whether it was intended for somebody else and not for Nisbit."

In *Anderson vs. Balfour, 3 B. W. C. C., 588,* a gamekeeper while in the discharge of his duties was assaulted by poachers and injured and it was held by the court of appeal of Ireland that the injury was accidental, that it grew

"out of" and was sustained while "in the course of" employment, and that the gamekeeper was entitled to compensation on account of his injury.

It seems to us to be quite clear that under the provisions of the Ohio workmen's compensation act, all that is necessary to entitle an employe to compensation is that he be injured while in the course of his employment and that the injury be not purposely self-inflicted. It matters not whether the injury arises "out of" the employment, or whether it is caused by accident or by design, so that it is not necessary for us in any case to determine more than that the injury occurred in the course of employment and that it was not purposely self-inflicted. That there was an injury in this case resulting in disability and that it was not purposely self-inflicted, is conceded. We think the injury was incurred in the course of employment and compensation will be awarded accordingly.

The claimant being still in the hospital, the claim will be continued from time to time and compensation paid as and for temporary total disability until claimant recovers when the extent of his disability will be determined.

RE. CLAIM NO. 19542.

MARTIN PROCKNAU, *Claimant.*

(April 7, 1914.)

An employe who was employed to operate a truck stopped work and pursued a rat, which ran down an elevator shaft, and while looking down the shaft was injured by the descending elevator.

HELD: That the injury was not sustained in the course of employment.

STATEMENT OF FACTS.

Martin Procknau was on the 14th day of September, 1913, employed by The Schneider & Trenkamp Company, at 1787 East 40th Street, Cleveland, Ohio, and on the last mentioned date was injured in the following manner, viz.: He was employed as a truckman and on the afternoon of said date was directed to remove some scrap from in front of a press with his truck. He removed one load and while returning to the room in which the scrap was located he noticed a large rat running across the floor toward the elevator shaft. He left his truck and followed the rat to the elevator shaft into which it disappeared and instead of looking up to see where the elevator was, he looked downward to catch sight of the rat. At that moment the elevator was coming down. The elevator was provided with an automatic gate and as it approached the floor on which claimant stood, the gate automatically raised striking claimant on the bottom of the lower jaw. The attention of the operator of the elevator was attracted by the cries of the claimant and upon shutting off the power and making an investigation, he found claimant with the back of his neck wedged against the bottom of the elevator and his lower jaw against the top of the elevator gate. The claimant in his application described his injury as consisting of "one broken rib and a crushed chest."

It appears that claimant returned to work the following day but after working a while left his employment.

Claimant's attending physician describes the injury as "separation costal cartlages of 7, 8 and 9th ribs of the right side," but makes no claim that the ribs were broken. He describes his treatment as "chest strapped about one week after injury."

Claimant's weekly wage at the time of his injury was $8.75.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The proof on file seems to establish the fact of claimant's injury although the extent of the same does not clearly appear. The important question to be determined is whether the claimant was in the course of his employment when he was injured. He was employed as a truckman and had been assigned to certain work and had he continued in the performance of his duties his claim for compensation would not now be before this Commission. Unfortunately for the claimant, his attention was attracted to a rat which disappeared down the elevator shaft which it seems was located some distance from where claimant was at work. Whether the unusual size or appearance of the rat attracted his attention or whether the premises were so free from rats that the unexpected appearance of one of the rodents was calculated to divert the attention of those employed thereabout from their work does not appear. It does appear however that claimant was employed to operate a truck and not to chase rats, so we have concluded that the claimant was not in the course of his employment when injured and compensation is denied.

RE. CLAIM NO. 24574.

Orlena Stith, et al., *Claimants.*

(May 7, 1914.)

An employe was injured on January 5, 1914, by an elevator or hoist being lowered upon him while he was at work in the shaft in which the hoist was operated. He did not report his injury nor did he consult a physician but continued to work at the same employment at which he was engaged at the time of receiving the injury for fifty-two days thereafter, the only noticeable effect of the injury being black and blue spots upon his arm. On February 26, 1914, he suffered a collapse and died on March 1, 1914. A post-mortem examination disclosed that the immediate cause of death was the rupture of an aneurism of the ascending aorta.

HELD: That death did not result from an injury sustained in the course of employment.

STATEMENT OF FACTS.

Jonah Stith was on January 5, 1914, an employe of The Dawson Construction Company which company at that time was engaged in constructing a building on the grounds of the Ohio State University in the city of Columbus, and Stith was assisting in the construction work. He had been employed by the construction company for some months prior to that date. He was earning $24.00 per week and had been earning that amount of wages for about ten months prior to his death which occurred on March 1, 1914.

On January 5, 1914, while in the course of his employment, he was in a shaft in which was an elevator or hoist used for raising and lowering materials on the building and the hoist was lowered and rested on Stith's shoulders and arms for some time—the length of time does not appear very clearly but for perhaps a minute or more—before it was raised by the engineer. No evidence is offered to show the size and weight of the elevator or hoist which was lowered on Stith but it is shown that for some days after receiving the injury his arm was black and blue. He did not report the injury to his employer or to this Department nor did he have medical attention as a result thereof. He continued to work for his employer for fifty-two days following the day of the injury.

On February 26, 1914, Stith suffered a collapse from the rupture of an aneurism of the aorta and died on March 1, 1914.

A post-mortem examination was held which determined that the immediate cause of death was the rupture of an aneurism of the aorta and that the rupture occurred on February 26, 1914. We have this report as the result of the post-mortem which was made by Dr. H. M. Brundage, of Columbus:

> "Everything was negative, microscopically, with the exception of the ascending aorta and the peri-cardium. The ascending aorta had an opening through the tunica-intima, tunica-media, and a sac formed over this opening by a distension of the tunica-adventitia. The opening through the two inner coats was just above the sinus of valsalva, that is, just external to the heart itself. This sac is commonly termed an aneurism, and so long as it stays intact and of no greater size than this one, there are most commonly no symptoms produced, but if this sac enlarges or ruptures, as this one did, the consequences are serious. The rupture in this case allowed the man to bleed into the peri-cardium, where we found very nearly a pint of blood clots. These, by their interference with the action of the heart, together with the sudden loss of blood from the natural stream, undoubtedly were the cause of death. As to the time that this aneurism started, there is no way whatever of determining, but the rupture of the same must have happened when he had the first collapse on Thursday morning prior to his death on Sunday, March 1st.
>
> From the history given by the family and the attending physician, it is impossible for me to attach any importance to injury received by him in January as regards the death; however, it would be useless for me to make a positive statement that this injury had nothing to do with the formation of the aneurism, for we have no way of determining when the primary rupture of the internal walls of the artery took place. We only know that the rupture of the aneurism itself could not have been caused by this injury at such a long period before the death."

It appears that the deceased was a very large, strong man and, so far as the evidence before us discloses, had never been in bad health.

One of the representatives of our Medical Department attended the post-mortem and we have a very lengthy report from our Chief Medical Examiner in which the following statements are made in reference to the matter:

> "Medical facts show that an aneurism that ruptures in this manner, as shown by the post-mortem, does necessarily cause a condition of collapse. This condition of collapse did occur, as stated above, which showed the time that the aneurism ruptured. It is a positive medical fact, which cannot in any way be contradicted, that the aneurism could not have ruptured at the time of the injury, which is supposed to have occurred on January 5th. The only question, therefore, which can be of interest as regards medical facts, is, can it be determined that an injury, as it is supposed to have occurred and described, as of January 5th, could have been the original cause of producing the aneurism; or could this injury, or supposed injury, have been the cause or aggravation of an aneurism, which was present, to such an extent that it would cause it to rupture 52 days later. There is absolutely no way on earth to possibly determine as to whether this might have been the case. If the man did have an aneurism present as of January 5th, the history

given does not indicate that this so-called injury aggravated the condition. It is true it might have and it is further true that any strain might have aggravated the aneurism, such as strain due to constipation.

The facts, therefore, in this case show that it is absolutely useless and impossible to attempt to determine that the injury on January 5th was the remote or aggravating cause of death in this case. It is the opinion of Dr. Emerson and myself, from the facts shown and from the history as given, that it is impossible to attach any importance to this so-called injury as being in any way connected with the cause of death."

The employer's certificate, which is a form on which the injury is described in death cases, states:

"We do not know of any injury sustained by deceased which caused his death."

No official death certificate has been filed in this claim but Dr. Lisle W. Neiswander, the attending physician (who first attended the deceased on February 26, 1914) filed the physician's certificate and proof of death in which he states that the immediate cause of death was "Rupture of aorta above the heart" and the remote cause of death was "Injury January 5, 1914."

The deceased left surviving him the claimant, Orlena Stith, his widow; Gladys, an invalid daughter, age 20 years; a son Dwight, age 12 years; and another son, Harold, age 9 years, all of whom lived with the deceased at the time of his death. It is alleged in the application that Gladys was wholly dependent upon the deceased for support as were the widow and the younger children.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The important question to be determined by us in this claim is whether Jonah Stith came to his death by reason of an injury sustained by him on January 5, 1914, or whether his death was caused by disease. That he sustained a slight injury while in the course of his employment on the date last mentioned sufficiently appears in the proof submitted, but as he continued to work for fifty-two days following such injury without consulting a physician and without reporting the injury to his employer and without any apparent disability, it is evident that he did not himself regard the injury as likely to result seriously.

Of one thing we are sure—at least the doctors say there is no question about it—and that is that death was caused by the rupture of an aneurism of the ascending aorta. We understand that an aneurism is the dilation of the walls of the aorta and that if the dilated portion is sufficiently large it results in the rupture or breaking of the walls. We further understand that the walls of the aorta are composed of three layers of tissue and that the aneurism may result in the rupture of the inner and middle tissues without serious consequences immediately following but upon the rupture of the outer tissue of the wall serious consequences follow. We further understand that there are various causes for the developing of aneurism, the most usual causes being certain diseases and alcoholism and that any strain or unusual effort on the part of the individual so afflicted is likely to aggravate the condition. It also appears from medical tesitmony in this claim that an in-

dividual may have an aneurism of which he is wholly unconscious and which may not cause him any serious inconvenience until the rupture takes place and he suffers collapse followed by death. This is a subject about which the members of this Commission profess to know absolutely nothing except as we are enlightened by the testimony of members of the medical profession who are learned and experienced in such matters.

From the medical testimony we assume that the deceased might have had an aneurism prior to the time of his injury on January 5, 1914, and that the injury he then sustained may have aggravated its condition and hastened his death. Or, the injury of January 5, 1914, may have had no effect whatever on the existing aneurism but over-exertion at a subsequent time, either while in or out of the course of his employment, may have occasioned the final rupture which resulted in death. Or, it is possible that the injury may have caused the initial rupture of the inner tissue of the aorta, thus giving rise to the beginning of the aneurism. We are unable to conclude from the evidence before us that the weight of the evidence indicates that the aneurism may have been caused by the injury or even that it was aggravated by the injury, thus hastening the death of the deceased. It really seems most probable to us, considering all of the facts, especially the fact that Stith continued to work for fifty-two days after the injury, that the injury of January 5, 1914, was neither the immediate nor the remote cause of death.

We arrive at this conclusion with the full knowledge that there is a possibility that the injury may have been the remote cause or rather a contributing cause to decedent's death. But we are not deciding claims on mere possibilities, nor are we permitted to arrive at conclusions by guessing. Our conclusions must be logical deductions from facts placed in evidence for our consideration and these facts, while it is not necessary that they be absolutely convincing, must be such as to warrant our conclusion that it is more probable that the alleged injury caused the death than that it resulted from other causes. In other words, in all claims for compensation, the burden of proof is upon the claimant to establish his claim by a preponderance of evidence. Of course, the situation is a little different from that obtaining in the trial of a civil action in court, in that the proceeding before the Commission is not controversial in its nature, but rather *ex parte*. The proceeding is on behalf of the claimant but it is not against the employer, although the testimony of the employer is always taken in death claims. It is against the fund. We start in with no presumption either that death did or did not result from an injury. In fact we start in with no presumption that any fact did or did not exist and it is incumbent upon the claimant seeking to establish his rights to receive payments from the state insurance fund to establish the existence of every fact necessary to be found by the Commission before it has a right to authorize an award.

This we think the claimants have failed to do and compensation is denied.

MARY L. BIDDINGER, ET AL., *Claimants.*
THE CHAMPION IRON COMPANY, *Employer.*

CLAIM NO. 54.
(Under Section 27 of the Compensation Act.)

1. Section 26 of the workmen's compensation act of 1913 relates to civil actions maintained in the courts and it has no application to proceedings before The Industrial Commission of Ohio brought under favor of Section 27 of said act.

2. In a proceeding before The Industrial Commission of Ohio under Section 27 of the workmen's compensation act of 1913 it is not necessary for the claimant to prove

that his injury was caused by the negligence of his employer. It is sufficient to prove that the injury for which compensation is claimed occurred while "in the course of employment."

3. An injury arises "in the course of employment" if it occurs while the employe is doing what one so employed may reasonably do within the time during which he is employed, and at a place where he may reasonably be during that time.

4. An employer who was not a subscriber to the state insurance fund prior to January 1, 1914, and failed to pay his premium into the fund until May 2, 1914, was in default from January 1, 1914, until the date of said payment, and the payment by him of his premium on May 2, 1914, had no retroactive effect, and such employer is liable to pay compensation direct to his injured and the dependents of his killed employes on account of injuries or deaths occurring between January 1, 1914, and May 2, 1914.

5. The fact that the injury occasioning the death of an employe while in the course of his employment, did not result from any negligence on the part of the employer, his officer, agent or employe, but was caused solely by the negligence of a third person does not relieve the decedent's employer from paying compensation on account of such death.

6. The law of independent contractor was in no wise changed by the enactment of the workmen's compensation act of 1913.

7. Where the decedent, while at work for his employer, a sub-contractor, on one of the lower floors of a building in the course of erection, was killed by the falling of a piece of plank from one of the upper stories, presumably caused by one of the workmen of the principal contractor who was working on the same building,

HELD: That the decedent's death occurred "in the course of his employment" and his dependents are entitled to compensation.

(Decided July 1, 1914.)

STATEMENT OF FACTS.

On April 10, 1914, Alta Biddinger was employed by The Champion Iron Company, which was a sub-contractor for the erection of the structural steel work of the Hardin County Court House, at Kenton, the principal contractor being The Steininger-Taylor Construction Company. Biddinger was injured while he was heating rivets at a portable forge, being struck by a plank dropped from the attic floor of the building, receiving injuries that resulted in almost immediate death. Whether the plank was thrown from above by accident, negligence or design does not appear in the evidence; but it seems to be conceded that no one connected with The Champion Iron Company was in any way responsible for its fall. Employes of the principal contractor, The Steininger-Taylor Construction Co., were at work on the floor from which the plank fell.

The deceased had entered the employment of The Champion Iron Company on the day he received the injury which resulted in his death. He was employed at a wage of 20c per hour, amounting to $10.80 per week. During the preceding year he had worked for a time as a polisher and plater at 39c per hour, for a time on construction work on the Erie Railroad at about 20c per hour, was out of work part of the time and sick part of the time, his wages for the preceding year amounting to approximately $600.00. From 1907 to 1912 he was employed at the brewery at Peter Waldeck & Son, at Kenton, at a weekly wage of $14.00.

The Champion Iron Company on the date of the injury resulting in Biddinger's death was not a subscriber to the state insurance fund and had not on that date elected to pay compensation direct under the provisions of Section 22 of the compensation act. The company had on the 17th day of December, 1913, filed an application for classification and rating, and after some delay and considerable correspondence, was finally notified by The Industrial Commission of its proper classification and rating and the amount of its first semi-annual premium on the 6th day of March, 1914, and was at the same time furnished with a pay-in order directed to the Treasurer of State authorizing the Treasurer to receive the amount of the premium.

The deceased left surviving him Mary L. Biddinger, his widow, and an infant daughter, Catherine Mary Biddinger, aged one year, both of whom were living with the deceased at the time of his death. A stepson, Harry E. Newcomb, a child of Mrs. Biddinger by a former marriage also resided with them and was a member of the family.

FRANCIS W. DURBIN, *Attorney for Claimants.*
GEORGE E. CRANE, *Attorney for Employer.*

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

It is conceded that the decedent was an employe of The Champion Iron Company, and that he was killed as hereinbefore set forth, that the claimant, Mary L. Biddinger, is his widow, that Harry E. Newcomb is his stepson, and that Catherine Mary Biddinger is his daughter and that all were dependent upon him for support at the time of his death.

A number of important questions are involved in the consideration of this claim, which will be taken up in their order.

1. The first question is as to the proper construction of Sections 26 and 27 of the compensation act, which are as follows:

> SECTION 26. Employers mentioned in sub-division two of section thirteen hereof, who shall fail to comply with the provisions of section twenty-two hereof, shall not be entitled to the benefits of this act during the period of such non-compliance, but shall be liable to their employes for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employes, and also to the personal representatives of such employes where death results from such injuries, and in such action the defendant shall not avail himself or itself of the following common law defenses:
>
> The defense of the fellow-servant rule, the defense of the assumption of risk or the defense of contributory negligence.
>
> And such employers shall also be subject to the provisions of the two sections next succeeding.
>
> SECTION 27. Any employe whose employer has failed to comply with the provisions of section twenty-two hereof, who has been injured in the course of his employment, wheresoever such injury has occurred, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceedings against his employer by civil action in the courts, as provided in the last preceding section, file his application with the state liability board of awards for compensation in accordance with the terms of this act, and the board shall hear and determine such application for compensation in like manner as in other claims before the board; and the amount of the compensation which said board may ascertain and determine to be due to such injured employe or to his dependents in case death has ensued, shall be paid by such employer to the person entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the board; and in the event of the failure, neglect or refusal of the employer to pay such compensation to the person entitled thereto, within said period of ten days, the same shall constitute a liquidated claim for

damages against such employer in the amount so ascertained and fixed by the board, which with an added penalty of fifty percentum, may be recovered in an action in the name of the state for the benefit of the person or persons entitled to the same. And any employe whose employer has elected to pay compensation to his injured, or to the dependents of his killed employes in accordance with the provisions of section twenty-two hereof, may, in the event of the failure of his employer to so pay such compensation or furnish such medical, surgical, nursing and hospital services and attention or funeral expenses, file his application with the state liability board of awards for the purpose of having the amount of such compensation and such medical, surgical, nursing and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the board and with like effect as hereinbefore provided.

And the state liability board of awards shall adopt and publish rules and regulations governing the procedure before the board provided in this section, and shall prescribe forms of notices and the mode and manner of serving the same in all claims for compensation arising under this section. Any suit, action or proceeding brought against any employer under the provisions of this section, may be compromised by the board, or such suit, action or proceeding may be prosecuted to final judgment as in the discretion of the board may best subserve the interests of the persons entitled to receive such compensation."

The employer contends that in claims for compensation filed under favor of Section 27 of the act, it is not sufficient for the claimant to make a showing which would entitle her to receive compensation in a proceeding filed against the state insurance fund, but that Sections 26 and 27 should be construed together and that it is necessary not only to establish the fact of injury to the deceased in the course of his employment but to produce evidence which would enable his personal representative to recover a judgment in a civil action prosecuted under favor of Section 26 of the act. In other words, it is claimed that in order to authorize the Industrial Commission to award compensation in a proceeding brought under Section 27 of the act, it is necessary that the claimant furnish evidence satisfactory to the Commission not only that the deceased was injured in the course of his employment but that his injury was occasioned by the wrongful act, neglect or default of the employer, his officer, agent or employe.

If the provisions of Sections 26 are to be considered at all in the proceedings authorized by Section 27 then the claimants are not entitled to compensation, as no evidence has been produced showing that either The Champion Iron Company, its officers, agents or any of Biddinger's fellow employes were guilty of any wrongful act, neglect or default contributing in any way to Biddinger's injury.

The Commission has given this question careful consideration and to the minds of its members it is quite clear that no consideration whatever should be given to the provisions of Sections 26 in such a proceeding as this.

The compensation act was designed to substitute the principles of compensation for the principles of employers' liability. Section 22 of the act provides explicitly that it shall be the duty of each employer in the state of Ohio employing five or more employes to pay his premiums into the state insurance fund in the month of January, 1914, and semi-annually thereafter. Section 23 provides that employers who comply with the provisions of Section 22 shall not be liable to respond in damages on account of injury or death of

their employes during the period covered by such premium so paid into the state insurance fund or during the interval of time in which such employer is permitted to pay such compensation direct to his injured or the dependents of his killed employes. To this rule of non-liability for damages, on the part of employers who comply with the law there is no exception except for injuries occasioned by the "wilful act" of the employer or by his failure to comply with "lawful requirements" for the protection of the lives and safety of employes, in which event the injured employe or his legal representative in case death results from injuries may at his option either claim compensation or institute proceedings in the courts for damages. This right is conferred by Section 29.

Section 25 provides that the State Liability Board of Awards (now The Industrial Commission of Ohio) shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, and that employers electing to directly compensate their injured employes shall pay directly to such injured employes or to the dependents of employes who have been killed in the course of their employment the compensation provided by the terms of the act. The only exception to the right of the employe to receive compensation when injured in the course of his employment is when the injury is "purposely self-inflicted."

In the event an employer does not comply with the provisions of Section 22 and his employes are injured or killed, they or their dependents have two remedies, viz.: a civil action for damages in which the employer is deprived of the common law defenses of contributory negligence, assumption of risk and the fellow-servant rule; or a proceeding for the assessment of compensation. The injured workman or his dependents have the right to elect after the injury or death as to which remedy they will pursue. If action for damages is chosen, the parties are governed by the provisions of Section 26 which applies only to civil actions prosecuted in the courts, and it is incumbent upon the plaintiff to establish that the injury or death was occasioned by the *wrongful act, neglect or default* of the employer. If the compensation route is chosen, the claimant is governed by the provisions of Section 27, which applies only to proceedings before the Industrial Commission of Ohio, and he is in precisely the same position as though the employer had contributed to the state insurance fund and the claim was being made against that fund.

It is, therefore, unnecessary for the claimant in this proceeding to show negligence on the part of the employer or any person under its control, but she must show that the decedent was injured in the course of his employment and that his death was the result of the injury.

2. Another question to be determined is whether the deceased was injured while "in the course of employment." If so, his dependents are entitled to compensation. Section 25 of the compensation act provides in substance that employes "injured in the course of their employment" shall be entitled to compensation, provided such injuries have not been "purposely self-inflicted" and, if the injury results in death that their dependents, if they have any, shall be entitled to compensation. It is not claimed that the injuries to the decedent were purposely self-inflicted, so that it is only necessary for us to determine whether or not the decedent was injured in the course of his employment and if so that he died as a result of his injuries.

The precise language found in the Ohio workmen's compensation act of 1913 is found in the act of no other state or country. The English workmen's compensation act of 1906 and the acts of many of the states require that the injury be an *accidental* injury, that it *grow out of* the employment and that it

be sustained *in the course of* employment. Section 1 of the English Workmen's Compensation Act of 1906 (6 Edw. 7, C. 58) provides:

> "If in any employment personal injury *by accident arising out of and in the course of employment* is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule of this act."

It will be observed that under the provisions of the English act it must appear that the injured employe sustained his injury "by accident"; that it grew "out of" the employment, and that it occurred while he was "in the course of employment."

The English courts have been called upon to construe the language of this section many times, and it seems to be well settled that the expressions "out of" and "in the course of" are not synonymous.

In *Fitzgerald vs. Clarke & Son,* decided by the Court of Appeals of England (99 L. T., 101; 2 K. B., 796; 1 B. W. C. C., 197) the following language was used by Buckley, L. J.:

> "The person entitled to compensation under the act is a workman who in an employment suffers personal injury 'by accident arising out of and in the course of the employment'. The words 'out of' and 'in the course of the employment' are used conjunctively not disjunctively; and upon ordinary principles of construction are not to be read as meaning 'out of', that is to say, 'in the course of'. The former words must mean something different from the latter words. The workman must satisfy both the one and the other. The words 'out of' point, I think, to the origin or cause of the accident; the words 'in the course of' to the time, place and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The latter words relate to the circumstances under which an accident of that character or quality takes place. The character or quality of the accident as conveyed by the words 'out of' involves, I think, the idea that the accident is in some sense due to the employment. It must be an accident resulting from a risk reasonably incident to the employment."

Section 2 of the workmen's compensation act of New Jersey contains the following provision:

> "When employer and employe shall by agreement, either express or implied, as hereinafter provided, accept the provisions of Section 2 of this act, compensation for personal injuries to or for the death of such employe by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in paragraph 11, in all cases except when the injury or death is intentionally self-inflicted, or when intoxication is the natural and approximate cause of injury, and the burden of proof of such fact shall be upon the employer."

In a case recently decided by the Supreme Court of New Jersey under the New Jersey workmen's compensation act, the facts were almost identical with those of the claim under consideration. The injured workman, a journeyman carpenter, was at work for his employer on a building in the course of erection and was killed by the falling of a bar of metal from one of the

upper stories, which was caused to fall by a workman of an independent contractor who had work on the same building, and it was held that his widow was entitled to compensation. (*Bryant Admx. vs. Fissell,* 84 N. J. L., 72; also 86 Atl., 458). In this case Trenchard, J., who delivered the opinion of the court, said:—

> "For an accident to arise out of and in the course of the employment, it must result from a risk reasonably incident to the employment."

Then, after quoting with approval the language of the court in *Fitzgerald vs. Clarke & Son, supra.,* he continues:—

> "We conclude therefore, that an accident arises *in the course of* employment if it occurs while the employe is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time. That the findings of fact in the present case justified the conclusion that the accident to Bryant occurred in the course of his employment, is beyond dispute. We are also of the opinion that the conclusion of the common pleas judge that the accident arose *out of* the employment was likewise justified. The prosecutor argues that there can be no recovery because the bar of metal which killed Bryant was caused to fall *by a workman of an independent contractor* doing work on the same building. We think there is no merit in this contention."

The Ohio workmen's compensation act is much more favorable to the injured workman than either the English or New Jersey acts, for it is not necessary that the injured workman or his dependents prove that the injury resulted from accident or that it grew out of his employment in order to entitle him to compensation. All that is necessary to be shown is that it happened while he was in the course of his employment, and, if we are to follow the reasoning of the English and New Jersey courts, an injury may occur "in the course of" employment and not grow "out of" the employment.

Our conclusion is that the injury to the decedent occurred in the course of his employment and that his dependents are entitled to compensation.

3. It has been suggested that the claimants are not entitled to compensation from The Champion Iron Company because the injury resulted from the negligent act of a workman employed by the principal contractor who had taken the contract to erect the building and sub-let part of the work to the immediate employer of the decedent, both the principal contractor and The Champion Iron Company, the employer of the decedent, being what is known in law as "independent contractors". It is claimed that while the decedent was in the immediate employ of The Champion Iron Company, yet, in a larger sense, he was in the employ of The Steininger-Taylor Construction Company, the principal contractor for the construction of the court house and that owing to the hazardous nature of the work undertaken by the principal contractor he could not shift the burden of responsibility for work involving danger to others, but that it was his duty to see that the work was safely done and that third parties were not injured. In other words, that the well known exception to the general rule of independent contractor as laid down in *Covington & Cincinnati Bridge Co. vs. Steinbrock, 61 O. S., 215; Circleville vs. Neuding,* 41 O. S., 465; and *Railroad vs. Morey,* 47 O. S., 207, applies.

In *Covington & Cincinnati Bridge Co. vs. Steinbrock* the rule was laid

down that "where danger to others is likely to attend the doing of certain work, unless care is observed, the person having it to do, is under a duty to see that it is done with reasonable care, and cannot by the employment of an independent contractor, relieve himself from liability for injuries resulting to others from the negligence of the contractor or his servants".

We do not think there is anything in the compensation law to change or modify the law as to independent contractors in the least, but this rule, carried to its logical conclusion, would fasten the liability upon Hardin County, for it was the county that had the court house to build and let the contract for its construction to The Steininger-Taylor Construction Company.

The decedent was employed by The Champion Iron Co. He was in its service when he received the injury and his dependents have chosen to claim compensation from it. Inasmuch as we believe that the injury was sustained in the course of employment we know of no reason why The Champion Iron Company should not pay compensation to the decedent's dependents, unless for the reason that the personal representative of the decedent has a right of action against The Steininger-Taylor Construction Company or the county under the statute giving a right of action for wrongful death. The compensation act has made no exception whatever to the right of an injured employe or his dependents in the event the injury results in his death to receive compensation except when the injury is purposely self-inflicted. If it had been intended to deprive an employe or his dependents of compensation when the injury resulted from the negligent act of a third person we think the statute would have so provided. In the New Jersey case before referred to the same question was raised and the court was of the opinion that the fact that the injury resulting in the death of the workman gave a right of action for negligence against the principal contractor did not affect the claimant's right to receive compensation from the sub-contractor, his immediate employer, saying:

> "The act under which this suit is brought, and which at best provides only for partial compensation, nowhere provides specifically or by implication that an employe shall be deprived of his right to compensation thereunder merely because the accident gives rise to a right of recovery against a third party."

We think that the fact that the injury occasioning the death of an employe while in the course of his employment did not result from any negligence on the part of the employer, his officer, agent or employe, but was caused solely by the negligence of a third person does not relieve the decedent's employer from paying compensation on account of such death.

Whether acceptance of compensation from the immediate employer bars an action for damages against the principal contractor is a question which we are not called upon to decide.

4. Section 35 of the compensation act provides in substance that if there are wholly dependent persons at the time of the death of the injured employe, the payment shall be 66⅔% of the *average weekly wages,* and continue for the remainder of the period between the date of the death and six years after the date of the injury, and not to amount to more than a maximum of $3,750.00, or less than a minimum of $1,500.00.

It is not always easy to determine the average weekly wage of a workman. The act itself does not lay down any specific rule to be followed in determining the average weekly wage, nor has the Commission formulated any definite rule on the subject, although it is our practice to ascertain, if possible, all of the facts surrounding each particular claim and from those

facts to ascertain the average earnings of the workman. (*Re Claim 507, Ella R. Baird, et al., claimants*). The deceased was earning but $10.80 per week at the time of the injury causing his death. It is conceded by The Champion Iron Company that his earnings for the preceding year in the various employments in which he had been engaged were $600.00. It is claimed by the dependents that his actual earnings were $635.00, and that for a number of years prior to 1912 he worked in a brewery at Kenton at a weekly wage of $14.00. Taking all of these facts into consideration we think it fair to assume that his average weekly wages were $12.00.

Compensation is awarded to the dependents, Mary L. Biddinger, Catherine Mary Biddinger and Harry E. Newcomb, at the rate of $8.00 per week for 312 weeks from the date of the injury and death of the decedent, the same to be paid to said Mary L. Biddinger, for the joint use of herself, Catherine Mary Biddinger and Harry E. Newcomb, share and share alike; and funeral expenses are awarded in the sum of $124.25, the same to be payable to Mary L. Biddinger, it appearing that she incurred expenses connected with the funeral of the deceased in that amount and that she has paid the same; and hospital and medical expenses are awarded in the sum of $13.00, the same to be payable to Antonis Hospital, of Kenton, Ohio.

5. The Champion Iron Company claims that in the event compensation is awarded to the claimants that it should be paid out of the state insurance fund. In other words, that the circumstances are such as to warrant the Commission in finding that the company made diligent effort to comply with the provisions of the compensation act by paying its premium into the state insurance fund and was prevented from so doing within the time prescribed by the act on account of delays occasioned by this Department in properly classifying the industry of the company and promptly advising it as to the amount of its premium. We have given this matter careful consideration and find that the company filed an application for classification and rating on December 17, 1913, and that after some delay and considerable correspondence in reference to the proper classification of the industry, the company was finally notified by the Commission of its proper classification and rating and the amount of its first semi-annual premium on the 6th day of March, 1914. At the same time it was furnished with a "pay-in order" directed to the Treasurer of State authorizing the Treasurer of State to receive the amount of the premium, so that, allowing a reasonable time for remittance, the company had an opportunity to comply with the law not later than March 10, 1914, but did not do so until after the death of Biddinger which occurred on April 10, 1914. Had the injury resulting in Biddinger's death occurred prior to the sixth day of March, 1914, we would have no hesitancy in arriving at the conclusion that the company had made diligent effort to comply with the law and so had done all that could reasonably be required of it, and under such circumstances, would order the compensation paid out of the state insurance fund. But we do not think that the facts in this case justify such a course. The provisions of the act are clear. Section 22 provides in substance that it shall be the duty of all employers employing five or more employes to either pay their premiums into the state insurance fund in the month of January, 1914, and semi-annually thereafter, or, by proper proceedings before The Industrial Commission, to make arrangements to pay compensation direct to their injured and the dependents of their killed employes. The language is plain and there is no room for construction and it is obvious that to order a payment of compensation in this claim out of the state insurance fund would not only be a plain violation of the law but would establish a precedent which would be prolific of abuses.

The Champion Iron Company will be directed to pay the compensation, and the funeral, hospital and medical expenses herein awarded.

RE. CLAIM NO. 39378.

MARY A. GLOYD, ET AL., *Claimants.*

(Decided July 22, 1914.)

1. A common law wife is entitled to compensation under the terms of the compensation act.
2. At the time of the death of a workman who was killed in the course of his employment, he was living with and supporting a woman as his common law wife, and a child which was born to the union.

Held: That the common law wife and child were wholly dependent upon the workman for support at the time of his death.

STATEMENT OF FACTS.

Charles H. Gloyd was an employe of The Columbus Railway, Power & Light Company, of Columbus, Ohio, as a lineman and on June 10th, 1914, while in the due course of his employment, received an electric shock from which he died instantly.

At the time of his death and for some years before, his earnings averaged $18.00 per week or more.

At the time of his death he was living at 533 South Lazelle Street, in the City of Columbus, with a woman known as "Josephine E. Gloyd". A child, Charles Thomas Gloyd, was born in February, 1914, the decedent and "Josephine E. Gloyd" having lived together continuously for about fourteen months prior to its birth.

"Josephine E. Gloyd" was formerly married to a man named Beatty, who some years before filed an action for divorce against her in the Common Pleas Court of Franklin County, and on June 8, 1909, upon trial of the action Hon. Frank Rathmell, one of the Judges of the Court of Common Pleas, made the following entry upon his docket, viz:—

> "James Beatty vs. Josephine E. Beatty, June 8, 1909. Decree of divorce for plaintiff on ground of adultery. Plaintiff to pay costs. Frank Rathmell, Judge".

No entry was ever placed on the journal of the court granting a decree.

The mother of the deceased resides at Lockbourne, Franklin County, Ohio, the father of the decedent having died and she having remarried. She owns no real or personal property and prior to the death of the decedent was supported by the joint efforts of her husband and several sons other than the decedent. The decedent himself made occasional small contributions toward his mother's support from time to time, the amount and the frequency of which does not appear from the testimony introduced at the hearing.

ABERNATHY & DAVIS, *Attorneys for "Josephine E. Gloyd" and Charles Thomas Gloyd.*

LOUIS ALCOTT, *Attorney for the mother.*

By the Commission: — (Opinion by Yaple, Chairman; Duffy and Hammond, Commissioners, concur.)

It seems that the decedent was killed in the course of his employment and at the time of his death he was supporting the applicant "Josephine E. Gloyd" and her child, with whom he was living at the time.

The validity of the claim of "Josephine E. Gloyd" is based upon the fact that she is the common law widow of the decedent. To be such widow she must have been his common law wife as distinguished from his concubine. Common law marriages are recognized in Ohio, the Supreme Court having so determined in *Carmichael vs. State,* 12 O. S., 553; and in the latter case of *Umbenhower vs. Laubis,* 85 O. S., 238.

It is necessary in order to constitute a common law marriage that the parties agree to be husband and wife by words importing a present contract, followed by cohabitation as husband and wife and a holding out of each other as such. "Josephine E. Gloyd" has testified as to the contract of marriage and no testimony has been introduced to contervert her statement. She says that she was employed as a domestic in the decedent's home at the time of the death of his second wife (he having been married twice before living with Josephine) that she continued to remain with the decedent as his housekeeper after the death of his wife, that about three months after the wife's death the decedent and she were sitting at the dinner table and that the decedent then said:—

> "You are alone in the world and I am alone. If you will be my wife I will be your husband, and will take care of you as long as you live. We will sell what there is here so there will be no reminder of the past, and we will start anew."

She said she replied to that, "I will do it", and that thereafter, in pursuance of that arrangement, they started living together as man and wife. That the decedent held the claimant, "Josephine E. Gloyd" out as his wife and introduced her as such to his acquaintances is clear. In fact, the circumstances following the alleged agreement of the decedent and the claimant, "Josephine E. Gloyd" are all that are required to establish the common law relationship of husband and wife. Assuming that such a contract was made, and as before stated no one has appeared to contervert it, and the surrounding circumstances are such as to indicate that such a contract was made, we are of the opinion that "Josephine E. Gloyd" was the common law wife of the decedent at the time of his death.

It follows that she and her child were wholly dependent upon the decedent for support and should be compensated accordingly. (Section 35, of the compensation act.)

The occasional contributions made by decedent to his mother were few and far between — in fact no definite proof has been offered that he assisted in her support at all.

An award will be made in the sum of $12.00 per week, all of which will be made payable to "Josephine E. Gloyd" for the equal benefit of herself and her minor child, Charles Thomas Gloyd, such payments to continue the full period of six years from and after the date of decedent's death.

RE. CLAIM NO. 27035.

MRS. CHRISTIAN SCHMITT, ET AL., *Claimants.*

(July 30, 1914.)

An employe of a contractor engaged in road construction fell off of one of his employer's wagons on which he was riding and died as the result of injuries thereby sustained. The employer did not furnish transportation to its employes to and from their work. The killed employe had not reported for work at the time he received the injury which resulted in his death, the place where the injury was sustained being a mile or two from his place of employment.

HELD : That the injury was not sustained in the course of employment.

STATEMENT OF FACTS.

On March 23, 1914, Christian P. Schmitt was employed by The Doepke Company, of Cincinnati, Ohio, being employed under the name of "Joseph Williams". The Doepke Company is a corporation and at the time was engaged in road construction work on one of the improved roads of Hamilton county. Schmitt or "Williams", as he was known to his employer, was employed as a laborer and on the above mentioned date was riding on a wagon, the driver of which was also in the employ of The Doepke Company, when the wagon ran over a pile of cinders and Schmitt was jolted off and one of the wheels of the wagon passed over him, resulting in injuries from which he died on the same day. He left surviving him the claimant, his wife, Mrs. Christian Schmitt; a daughter, Edna, 16 years of age; a son, Elmer, 3 years of age, all of whom are alleged to have been wholly dependent upon him; also his father and mother aged respectively 69 and 67 years were alleged to have been partially dependent upon him. His average weekly wage was $13.50 per week.

It seems that "Williams" and some other employes of The Doepke Company were living in a shanty not far from where the work was being done, on which he was employed. On the morning of March 23, 1914, Schmitt sent word to Charles L. Wright, the superintendent, that he intended to lay off that morning and that he would be at work at 9 o'clock. It further appears that he left the camp where he was living to ride upon one of the wagons of The Doepke Company; that the accident which resulted in his death happened about a mile away from the place where the work on which he was employed was going on. The driver of the wagon on which Schmitt was riding was Clifford Lewis, of Carthage, Ohio, and he testified as follows at the coroner's inquest:

> Q. Did you know the deceased, Christian Schmitt?
>
> A. Yes, sir; I knew him by the name of Joe Williams. He was here since November.
>
> Q. What kind of a man was he?
>
> A. He was a gentleman. He drank. I cannot say I ever saw him drunk. I had taken a drink with him. I never saw him lay off until this morning.
>
> Q. Where did you see him on the 23d?
>
> A. We cooked together. I did not see him Sunday. I came down Monday morning and he sent word with another driver for me to come over to breakfast, and I told him I had breakfast, and he asked if I wanted a little whiskey, and he had a couple of drinks, and we each took a drink.

Q. Then where did you go?

A. He said he did not believe he would work that morning and he would take a ride with me and help shovel on a load of cinders, and when I came around with the team I stopped and he got on the wagon, and we got to Shillito and Burnet Avenues, and he said we would have a drink, and we went in and I bought a drink and he bought one, and that was all I saw him drink.

Q. Do you think he had been drinking before this?

A. I had not seen him; I do not know.

Q. You went down to the Avondale Barns?

A. Yes, sir. We loaded up and he helped put the load on, and in the meantime the time-keeper went out, and I do not know whether they had a drink or not. When I got loaded I pulled around the building and pulled up Reading Road up to Oak Street, and just as we started down hill, I had the lines in my left hand and reached for the brake with my right hand and the brake will not hold unless you have hand or foot on it, and I had my hand on it and when I got the brake on he hollered and tumbled off the seat and whether he hit the mule's foot or not, I do not know, and when I stopped the team, the wheel was on his chest.

Q. He was not working this morning in his own work?

A. Did not report for work. He met the time-keeper at the barns.

Walter Thornton, another teamster, also testified at the coroner's inquest, as follows:

Q. As far as you know, he had no business on the wagon?

A. No, sir. These two men (Schmitt alias Williams and the driver of the wagon) started on the wagon together. He was just riding down with Lewis.

The employer states: "Mr. Schmitt was riding to work on one of our wagons." It is further stated by the employer that transportation to work was not furnished to employes on their wagons.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

Before determining any of the other facts necessary to authorize an award, it is proper to determine whether the deceased was injured in the course of his employment.

That the deceased was an employe with The Doepke Company, which was engaged in road work in Hamilton County, in the suburbs or near the City of Cincinnati, clearly appears, but the important question to be determined is as to whether he was in the course of his employment at the time he met with the injury which resulted in his death. He was employed as a common laborer — as a concrete form setter, and when the accident happened he was at least a mile away from the place where he was employed. He had not reported for work on the morning he was killed, and left the camp where he was living to ride with the driver of one of the wagons.

We have obtained all the facts possible to obtain relative to what the deceased was doing at the time he was killed and there seems to be no doubt

that he was drinking on this particular morning and sent word to the superintendent of the work that he would not report for work until after 9 o'clock, and that in the meantime he was riding about on one of the wagons of his employer until such time as he was ready to return for work.

It appears that the employer did not furnish transportation for its employes to and from their work by wagon or otherwise, so that the question as to whether an employe who is furnished transportation by his employer to and from his work and is injured or killed while being so transported, does not appear in this claim.

We conclude that the facts do not warrant the conclusion that the deceased was injured while in the course of his employment, and compensation is denied.

RE. CLAIM NO. 45618.

ELLEN FAIR, ET AL., *Claimants.*

(August 14, 1914.)

Apoplexy, superinduced by over-exertion, is an injury within the meaning of the compensation act.

STATEMENT OF FACTS.

James Fair, while employed by The Brier Hill Steel Company, at Youngtown, Ohio, died on May 21, 1914. At the time of his death he was 67 years old and had been an employe of The Brier Hill Steel Company for 43 years.

He was employed as a watchman and on May 21, 1914, while in the course of his employment, at 4:30 P. M., he noticed two men stealing pig iron from his employer at a point near the Tod Furnace gate. He gave chase to the two thieves for quite a distance when he was overcome by the exertion and suffered a stroke of apoplexy and died within ten minutes.

The official death certificate gives the cause of death as "cerebral hemorrhage". The employers' certificate describes the injury as follows: "Over exertion when trying to capture two men who were stealing pig iron". Dr. D. R. Williams, the attending physician, says, the cause of death was "apoplexy, superinduced by excitement and exertion".

Our Chief Medical Examiner reports as follows:

> "This man was either the victim of an overtaxed heart or apoplexy. We have no way to judge which, but it would seem certain to us to be due to an increased pressure dependent upon overexertion and excitement. His age being 67 years would lead us to believe that he would of necessity be infirm in various ways and we would expect him to have arterio-sclerosis, or a defective heart. We are not sure as to what would be the status of the case with this bad physical condition. We have no doubt, however, that the exertion and highly excited condition of this man's nervous system had a great deal to do with his death, but we do not believe that if he had been a good strong man that this exertion and excitement would have had any effect upon him."

The decedent left surviving him a widow, Ellen Fair, and nine children, ranging in age from 18 to 39 years, four of whom are married, leaving four sons and one daughter at home at the time of decedent's death. The widow is 65 years of age and has been a confirmed invalid for years and requires

the attention and aid of two of her children at all times, she being unable to walk or take care of herself in any way.

Of the five children residing at home Patrick, age 26, is the only one employed, his earnings being $16.00 per week. Of the others, James Fair, 29 and John Fair, age 24, and George Fair, age 18, are alleged to have been partially dependent and a daughter, Helen Fair, wholly dependent upon decedent for support at the time of his death.

Decedent was earning $17.25 per week at the time of his death, which he had been earning for more than a year last past.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The question to be determined is whether cerebral hemorrhage or apoplexy, superinduced by over-exertion, is an injury within the meaning of the compensation act.

An examination of the decisions under the English compensation act discloses that apoplexy, when brought on by over-exertion in the course of employment, is considered an accident growing out of and in the course of employment within the meaning of that act. See *McInnes vs. Dunsmuir & Jackson,* 45 S. L. R., 804; 1 B. W. C. C., 226; *Barnabas vs. Bersham Colliery Co.,* 4 B. W. C. C., 119. See also Bradbury's Workmen's Compensation, Vol. 1, page 363.

It is intimated in the report of the Chief Medical Examiner that had the decedent been in good physical condition he would not have died from the effects of exertion. Assuming this to be true from a medical standpoint, the fact remains that he did die, that the cause of his death was cerebral hemorrhage or apoplexy and that it was brought on by overexertion. While the decedent's physical condition may have been and doubtless was partly responsible for his death, it was the exertion and excitement engendered by the pursuit of two thieves which really caused the decedent's death.

Compensation will be awarded in the sum of $11.83⅓ per week for 312 weeks; also funeral bill of $150.00 and medical bill of $2.00.

RE. CLAIM NO. 33528.

WINNIE WILSON, ET AL., *Claimants.*

(August 18, 1914.)

An employe sustained an injury to his foot while in the course of his employment, a gangrenous condition developed, and the employe died a month after the injury, the immediate cause of death being "gangrene of leg, septicaemia."

HELD: That the employe's death resulted from the injury to his foot.

STATEMENT OF FACTS.

Walter S. Wilson was an employe of The Miller, DuBrul & Peters Mfg. Company, of 507 East Pearl Street, Cincinnati, Ohio, with whom he had been employed for 24 years prior to the 25th day of April, 1914.

On the last mentioned date he was moving a piece of machinery while in the course of his employment and an attachment of the same fell on his foot bruising same. The first notice of injury and preliminary application was

filed on May 8th. The injury is described as "bruise on left foot later developed in gangrene requiring amputation of middle toe."

The attending physician's report filed with the claim contains the following statement:

> "Patient called on me first on April 28th and 29th when I ordered complete rest and since his toe was better he did not call again until May 3rd. I was asked to see him on May 5th. I found signs of gangrene of the toe. Suspecting diabetes, I asked for a sample of urine which was not furnished me but I was informed that another physician had been called in and the patient removed to a hospital."

The attending physician further says in describing the injury:

> "There was redness, swelling and pain extending from the second toe to the ankle."

Application for compensation was filed on May 22, 1914, and on May 27th compensation was awarded for 2 3-7 weeks.

Wilson died on May 25, 1914.

Dr. Carroll DeCourcey, the physician attending him at the time of his death, gives the immediate cause of death as "gangrene of leg, septicaemia" and the remote cause of death as "diabetes." The official death certificate gives the cause of death as follows: "Diabetes mellitus, diabetic gangrene of left leg," contributory, "chronic nephritis." The employer's certificate states that the injury causing death was "bruise on left foot, later developed into gangrene."

Our Chief Medical Examiner has the following to say:

> "The reports in this case are conflicting. However, there is no denial of the fact of diabetes being present. There is no doubt the attending gangrene caused the amputation of the toe and later the death of the individual, but the real question is as to whether or not the gangrene had an exciting cause in the way of an injury as described in the first notice, and there seems to be no real proof filed in the case to show that this is a fact. If it was a fact that there was a bruise or contusion of the parts, we would consider that the man's death should be attributed to this injury since the chances are without the receipt of an injury he would have lived on even though he had diabetes without any toward or extraordinary symptoms."

At the time of his injury the decedent was receiving $18.00 per week as wages and had been receiving that amount for some years prior to his death.

The deceased left surviving him a widow, Winnie Wilson; Charles Wilson, a son by a former marriage, age 18 years, and his mother, Mary Wilson, age 75 years. The widow is alleged to have been wholly dependent and the son and mother partially dependent upon decedent at the time of his death.

By the Commission: — (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The sole question to be determined in this claim is whether the decedent died as the result of an injury sustained in the course of employment or whether his death was the result of disease, as it appears that he was suffering

from chronic nephritis and diabetes at the time of his death.

It is reasonable to infer that the decedent was afflicted with one or both of the above named diseases for a considerable period of time prior to his death and was so afflicted at the time of his injury. The injury itself was not a severe one and would not have been likely to have occasioned any considerable period of disability to a man in normal health. The facts are clear, however, that gangrene developed and that the injury together with the physical condition of decedent at the time of his injury caused his death.

We think it reasonable to conclude that death resulted from the injury, and, it being clear that the injury was sustained in the course of employment compensation is awarded in the sum of $12.00 per week for the full period of 312 weeks, less the sum of $29.14 previously paid for temporary total disability; hospital bill in the amount of $37.25; also funeral expenses in the sum of $150.00. The apportionment of the benefits among the claimants will be the subject of future action of the Commission.

RE. CLAIM NO. 36145.

JOHN TUCKER, *Claimant.*

(August 18, 1914.)

An employe injured between the time of entering into a contract of employment and actually entering upon the execution of the work for which he was employed, the injury being in no wise occasioned by the work to be performed, is not injured in the course of his employment.

STATEMENT OF FACTS.

John Tucker was employed by The Girard Iron Company Rolling Mills, at Girard, Ohio, on Saturday, February 2, 1914. Under his contract of employment he was to begin work on the following Monday morning. He was without funds and a non-resident of that locality and was sent by his employer to a boarding house under its management or control and while there, at about six o'clock on Saturday evening, February 21st, he fell down stairs and sustained an injury.

His contract with his employer called for a weekly wage of $20.00.

BY THE COMMISSION: — (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The injury in this case is alleged to have occurred on February 21, 1914. The first notice of injury and preliminary application was not filed until June 12, 1914. The information contained in the preliminary and supplemental application is very meager. Rule 4 of of our Rules of Procedure requires that the First Notice of Injury and Preliminary Application be filed within one week after the injury was sustained and that supplemental application be filed within three months after the date of the injury so that neither was filed within the time prescribed by the Rules of Procedure. We are not disposed to strictly enforce the provisions of the Rules of Procedure in cases where it is apparent that their enforcement would result in a denial of compensation to a person actually injured in the course of his employment, but the facts in this claim do not indicate to us that the injury was received in the course of employment and on that ground compensation is denied.

RE. CLAIM NO. 48427.

JOHN ZELAVZMI, *Claimant.*

(August 19, 1914.)

An injury sustained by an employe while boxing with a fellow employe was not sustained in the course of employment.

STATEMENT OF FACTS.

The claimant, John Zelavzmi, was on the 29th day of July, 1914, an employe of The Gray Lumber Company, of Cleveland, Ohio. On that date he and other employes of the Lumber Company were loading shavings into a conveyance when it seems that the claimant and a fellow employe suspended operations long enough to engage in a friendly bout in the course of which claimant was injured, the injury being described in his application as "contusion fo chest also some pleurisy." He was disabled about three days and incurred expense to the amount of $3.00 for medical treatment.

BY THE COMMISSION: — (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The amount involved in this claim is not important, but before it can be paid it is necessary for us to determine that the injury necessitating medical attention was incurred by the claimant in the course of his employment. That it was not so incurred we think is clear. It is true that when the claimant was injured he was on his employer's premises and engaged in the work he was employed to perform. But he had temporarily suspended his work and was indulging in "horse play" with a fellow employe.

Claimant's injury not being incurred in the course of his employment, compensation is denied him.

RE. CLAIM NO. 25876.

MILITZA BOSANAR, ET AL., *Claimants.*

(August 18, 1914.)

A wife is living with her husband at the time of his death within the meaning of paragraph 4 of Section 35 of the compensation act where there has been no legal or actual separation in the nature of an estrangment, although they are not physically dwelling together, and no facts appear suggesting the inference that either husband or wife had abandoned the other and had formed the intention of permanently living separate and apart.

STATEMENT OF FACTS.

Nikola Bosanar was killed on March 18, 1914, while employed by The M. Burkhard Brewing Company, of Akron, Ohio.

The official death certificate gives the cause of death as "fractured skull, accidently caught in elevator at Burkhard Brewing Co." The employer's certificate states that the death occurred in the elevator but that no one witnessed the accident. The deceased had been employed in the bottling department of the brewing company for some time prior to his death, but on the date of

his death he was assigned to new duties about the barns of the company and undertook to operate the elevator without having had instructions in regard to its operation.

The decedent was a native of Austria-Hungary and the claim papers have been filed and proof of the claim made by Ernest Ludwig, Consul for Austria-Hungary. The decedent had been in this country about seven years and left surviving him a widow, Militza Bosanar, resident of Austria-Hungary, and a minor son, aged 10 years, also resident of Austria-Hungary. Among other documents filed in proof of the claim is a protocol drawn up before the Royal Probate Court at Slatina, which, among other things, contains the following statements by the widow:

> "I was the wife of the deceased Nikola Bosanar since ten years and have from him one minor son by the name of Stevo Bosanar who is now 10 years old. The deceased lived in America since seven years and until his untimely death he regularly, every year, sent me money for my support and for the support of our son Stevo.
>
> During the first year he sent me a total of supports of 700 Kronen (about $145.00) and in the course of the second, third and fourth year I received from him 200 Kronen (about $40.00) each year, during the sixth year 250 Kronen (about $50.00) and during the seventh year 2,200 Kronen (about $445.00). These amounts were used for my living and for the support of our son Stevo, for the payment of taxes and for the cultivation of the small real estate belonging to Nikola Bosanar, my deceased husband."

The decedent was earning $12.00 per week at the time of his death and had been earning that amount for a considerable period of time prior thereto.

By the Commission: — (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

This claim presents two questions for our consideration, first; as to whether the deceased was killed while in the course of his employment, and, second; as to the degree of dependency of the claimants.

As to the first proposition, it seems reasonably clear that the decedent's death occurred through his negligence in undertaking to operate an elevator without having received proper instructions as to its operation. By this we do not mean that he had not been instructed to perform work which would necessarily include the operation of the elevator but that after having been assigned to work, the performance of which included the operation of the elevator, he undertook to operate the elevator without having received instructions with reference thereto. Under these circumstances we think that he lost his life in the course of his employment.

The second question involves the construction of Section 35 of the compensation act, paragraph 4 of which provides as follows:

> "The following persons shall be presumed to be wholly dependent for support upon a deceased employe.
>
> (A) A wife upon a husband with whom she lives at the time of his death.
>
> (B) A child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the death of such parent.

> In all other cases, question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employe, but no person shall be considered as dependent unless a member of the family of the deceased employe, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister. The word 'child' as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury."

The question to be determined is whether the decedent's wife and child were living with him at the time of his death within the meaning of this section. If they are to be so considered dependency is presumed. If not, proof is required as to the extent of the dependency. In other words, the question of dependency is one of fact and no presumption arises in its favor where the wife and child under sixteen years of age are living separate and apart from the husband and father at the time of his death.

The decedent had been in America for about seven years but had each year contributed to the suport of his wife and child in Austria-Hungary. He had taken no steps to become naturalized and we infer, although it does not clearly appear from the proof on file, that he contemplated returning to his family in Austria-Hungary.

Our attention has been called to the case of *Nevadajic vs. Northwestern Iron Company,* decided by The Industrial Commission of Wisconsin, on July 1, 1912, the facts as stated by the Commission being as follows:

> "Prokapia Nevadajic came to this country from the province of Korneia, Austria-Hungary, about three years and six months prior to the time of his death. He left a wife and child on the homestead in the province of Korenia. The homestead was a very small tract. After arriving in this country decedent did not return to his wife but he did keep a very desultory correspondence with her through friends, neither he nor her being able to read or write. He also sent her money, the amount being indefinite, but it is known that he did send her $21.00 on the 8th day of February shortly before his death. The law provides that a wife shall be conclusively presumed to be solely and wholly dependent upon her husband with whom she is living at the time of his death. It was contended by the respondent that the deceased was not living with his wife at the time of his death."

Upon this state of facts the Commission granted compensation, saying:

> "We are of the opinion that husband and wife are to be considered as living together even though one or the other may be absent from the home for a considerable length of time and separated by great distance; they are living together when they are not living apart when there is neither legal or actual separation of the bonds of matrimony."

This case was appealed to the Supreme Court of Wisconsin and its decision is reported in 142 N. W., 271; the finding of the Commission being upheld, the Court saying:

> "A husband and wife are 'living together' where there has been no legal separation or actual separation in the nature of an estrangement although they are not physically dwelling together; the question

not depending upon time or distance of their separation but upon the nature and character thereof, and the intent of the parties respecting it."
142 N. W. 171.

In the claim under consideration there is nothing to indicate that there had been a legal separation or that a permanent separation was contemplated by either the husband or his wife, but on the contrary there is tolerably clear evidence, which is undisputed, to the effect that the husband during the entire period of his residence in this country contributed to the support of his wife and child and it is fair to infer that it was his intention to return to them at sometime in the future.

Under the facts presented in this claim, as we see them, we think that the deceased was living with his wife and child at the time of his death within the meaning of the language of Section 35 above quoted. Any other construction would in many cases do an injustice to claimants residing in foreign lands, the difficulty of proof of dependency in such cases being greater than in ordinary cases where the parties live within the borders of the state of Ohio.

Such being our conclusion, the claimants are entitled to compensation in the sum of two-thirds of the average weekly wage of the decedent at the time of his death or $8.00 per week for the full period of 312 weeks. Compensation is awarded accordingly; also funeral expenses in the sum of $98.00.

RE. CLAIM NO. 44544.

HERBERT W. ANDERSON, *Claimant.*

(August 19, 1914.)

1. An employe injured while on his way from his place of employment to a railroad station, where he expected to take a car for home, is not entitled to compensation on account of the injury.
2. An employe injured by falling off of a conveyance on which he was riding from his place of employment toward his home, said conveyance not being provided by his employer, and the contract of employment being silent in reference to means of conveyance to and from work, though the employe is paid by the employer for the time necessarily consumed in going to and from his work, is not injured while in the course of his employment.

STATEMENT OF FACTS.

Herbert W. Anderson was on June 14, 1914, an employe of The Ritchie-Wertz Manufacturing Company, of Dayton, Ohio. On that date he fell off an endgate of an automobile on which he was riding and received injuries about the head, as the result of which he was totally disabled until July 6, 1914, on which day he returned to work at the same wages he was receiving prior to the time of his injury.

The employe was working some distance outside of the city limits and about twenty-five minutes walk from an interurban railroad, on the cars of which Anderson and other employes rode to and from the city of Dayton. The employer did not provide any means of conveyance from the station on the traction road to and from the place of employment, but allowed the employes twenty-five minutes in which to make the traction car after quitting work, for which time they received pay.

By the Commission: — (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The question to be determined in this claim is whether the claimant was in the course of his employment at the time of his injury. Ordinarily we would have no difficulty in finding that the injury was not sustained while in the course of employment, as the claimant had ceased work and left the premises of his employer and was on his way home, but it appears that claimant was paid for the necessary time consumed in going to and from an interurban car, on which he rode from the city to a station near his place of employment. It seems that this allowance was made by the employer because no means of transportation was provided for Anderson and his fellow employes, and they were thus left to select such transportation to and from their place of employment as they chose.

Ordinarily an employe cannot be said to have entered upon his employment until he reaches his place of employment. By this we do not mean that he must actually be engaged in the work he was employed to do, but that he must have at least reached his employer's premises. The same is true after he has quit work and left his place of employment or his employer's premises.

Of course there may be and doubtless are numerous exceptions to this rule, one of which is that when the employer furnishes means of transportation to and from work, the employe is usually considered as being in the course of employment. Thus, in the case of *Cremins vs. Guest, Keen and Mattlefold, 1 B. W. C. C., 160,* which arose under the English Workmen's Compensation Law of 1906, it was held by the Court of Appeal of England that where a mining company by agreement with a railroad company, ran a train each morning and evening for the accommodation of their own workmen, and it was an implied term of the contract of service between the workmen and the employers that the train should be provided by the employers and that the workmen should be entitled to travel by it to and from their work without charge, that a workman who was killed while attempting to board the train was entitled to compensation. In deciding this, Cozens-Hardy, M. R., said, after stating the facts: "It seems to me clear that the employment began when the colliers entered the train in the morning and ceased when they left the train in the evening, and that the employers are just as liable as they would admittedly have been if the accident had happened at the colliery itself. To avoid a misconception, I desire to say that I base my judgment on the implied term of this contract of service and that it by no means follows that every workman is entitled to the protection of the act whenever an accident happens to him on his way from home to his employer's place of business."

In the absence of an express agreement that the employer should furnish transportation to his employes to and from work, it seems to us that the rule would be the same where the employer habitually furnished means of conveyance without any specific agreement. The usual rule, however, under employers' liability laws and under the workmen's compensation acts, as well, is that an employe is not under the protection of the law while on his way to work.

In *Gilmour vs. Dorman, Long and Company, 4 B. W. C. C., 279,* an employe was accustomed to go to his work by a footpath which ran over vacant land belonging to his employers and afterwards along a railroad line, to the factory where he was employed. While on his way to work he was injured by slipping on some ice on the vacant land, a quarter of a mile from the place where he had to work. It was held that the injury did not arise in the course of employment, Cozens-Hardy, M. R., saying: "It has been repeatedly held that a man is not entitled to the protection of the act when on his way from

his home to the works. There may be some difficulty in ascertaining precisely when a man's employment begins. Generally speaking, the factory gate or yard indicates the boundary. Sometimes there may be a sort of excrescence, but I am not prepared to hold that an accident which occurred in a field some quarter of a mile distant and separated from the premises where the man is to work by land over which there was no right of access, can be deemed to have arisen in the course of employment."

The fact that the employer paid its employes for the time necessarily consumed in traveling to and from the railroad station to the place of employment does not necessarily mean that they were in the course of employment during that time. It does not appear that they were under the direction of the employer or any one acting for it, but on the contrary, they were left to choose their own method of travel. They could walk, or, if they found an opportunity to do so, they could ride. The place of employment in this instance seems to have been an isolated one and the payment to the men for the time consumed in traveling to and from the place where such work was being carried on may be considered as a sort of premium paid by the employer to cover the loss to which the employe would be subject on account of the time consumed.

It does not appear to us that the evidence warrants our concluding that the injury was sustained in the course of employment and compensation is denied.

ANNA STOPYRA, ET AL., *Claimants*,	CLAIM NO. 1966.
vs.	(Under Section 22 of the Workmen's Compensation Act.)
THE UNITED STATES COAL CO., *Employer*.	

1. Proof of acts which at common law constitute gross negligence raises no presumption that a resulting injury to an employe guilty of such negligence was "purposely self-inflicted."

2. The words "purposely self-inflicted" as used in Sections 21, 25 and 27 of the workmen's compensation act imply the unquestioned design of self injury — an inward purpose of injuring one's self — that must be shown by evidence.

(Decided August 19, 1914.)

STATEMENT OF FACTS.

The decedent, a coal miner in the employ of The United States Coal Company, was injured about half past two p. m. on the 4th day of March, 1914, by a fall of draw slate from the roof of his room in the Plum Run mine of the said company in Jefferson County, Ohio. He was about fifty years of age and married. He was employed by Thomas Mitchell, mine foreman of the company, in August or September, 1913, and he and a companion who entered the company's service at the same time, and whom the foreman claims were both practical and experienced coal miners, were given two rooms to mine which were about two hundred feet distant from the room in which the decedent was afterwards injured. They mined these two rooms together until about the first of January, 1914, when the companion was given other employment at his request and decedent continued thereafter to mine coal alone at his own request until his death. During this latter period the decedent worked in two adjoining rooms. Up until about January

1, 1914, the mine foreman visited daily the working places of these two men, observed their work, and frequently gave them instructions and cautions, though it was evident to him that both understood their duties and were practical miners; that after the first of the year William Harris, the assistant mine foreman, continued to visit daily the places where decedent was at work. On March 4, 1914, about eleven a. m., on making his daily round of the rooms, said assistant mine foreman visited the room in which decedent was engaged. He found decedent had his coal cleaned up except a small amount, possibly a car load of bottom coal over in the right hand corner of the room, where decedent was taking up this bottom coal. He had taken down his slate and thrown it back in the room except for a triangular patch in said right hand corner, which extended from the corner along the face about three or four feet and from the corner back along the right rib. This draw slate was about ten or twelve inches thick. Observing Stopyra working under this draw slate the assistant foreman ordered him to get a stone post and set it under the slate. The assistant foreman waited until Stopyra got a stone post, set it under the draw slate as directed, and wedged it tight with a cap piece. The post stood on the bottom stone, and not on the bottom coal, and was set about the middle of the stone, that is to say, about eighteen inches from the outside edge of the stone. In his affidavit the assistant mine foreman says that this draw slate breaks without warning, and that he had to compel Stopyra to post it on three or four different occasions when he found the latter cleaning up his room with draw slate hanging over him. After this stone post was set by Stopyra on the day of his injury the assistant foreman says that the former had plenty of space between it and the right rib to finish taking up his bottom coal. After a period of fifteen or twenty minutes spent with this miner in his room, and as he resumed the taking up of his bottom coal, the assistant mine foreman left him. About 2:30 p. m. the same day this assistant mine foreman was informed that Stopyra was hurt, and thereupon went directly to his room. He had been removed about fifteen minutes before. Those who first found him, and all who visited the room soon after Stopyra was hurt, say that he was lying or sitting a few feet distant from the right hand corner of the room; that two pieces of draw slate, one weighing about one hundred and seventy-five pounds and the other smaller, were lying in the right hand corner of the room, and the nearest stone post was lying back in the room on the gob about twelve feet from the face. The bottom coal had not all been taken up. His wedge was driven in the bottom coal six or seven inches from the face and possibly over a foot from the right rib. His hammer was lying near. The wedge and hammer are used in taking up the bottom coal. The only mark seen on him was a cut on his head, but he complained to Louis Kovacs, the machine man, who was the first to reach him, that his ribs were hurt. He died the following day.

It is well known to miners that after the coal is shot down from under the draw slate the latter is liable to fall at any time and generally does fall within a few hours after the blasting unless it is posted up, and that it is extremely dangerous to work under this draw slate when it is not posted.

Stopyra was a native of Austria-Hungary and left surviving him a widow and twelve children, whose names, ages and addresses are as follows:

Anna Stopyra, widow, age 46, Cewkow, Post. Dzikow Stary, Ciezanow, Galicia.

Andrew Stopyra, son, aged 27, New York City.

Maria Stopyra, daughter, age 24, New York City.

Josefa Stopyra, daughter, age 22, New York City.

Wladislava Stopyra, daughter, age 21, Cewkow, Galicia.
Martin Stopyra, son, age 19, Rhodesdale, Ohio.
Caroline Stopyra, daughter, age 18, Cewkow, Galicia.
Johan Stopyra, son, age 16, Cewkow, Galicia.
Frank Stopyra, son, age 15, Cewkow, Galicia.
Julia Stopyra, daughter, age 13, Cewkow, Galicia.
Emilie Stopyra, daughter, age 11, Cewkow, Galicia.
Alouise Stopyra, daughter, age 6, Cewkow, Galicia.
Josef Stopyra, son, age 2, Cewkow, Galicia.

Evidence which is not contraverted is to the effect that Stopyra regularly sent a portion of his earnings to his wife and that he supported his children under the age of sixteen years.

The United States Coal Co. was, at the time of Stopyra's death, authorized to pay compensation direct to its employes and their dependents, as provided by Section 22 of the Compensation Act.

Application for compensation is made by Ernest Ludwig, Austro-Hungarian Consul, on behalf of the widow and children.

The average weekly wage of Stopyra at the time of his decease was $9.03.

Messrs. Reed, Eichelberger & Nord, *for Claimants.*
Mr. A. C. Lewis, *for the employer.*

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The fact of injury in the course of employment, the death of the injured employe and the existence of a widow and children dependent upon him for support being admitted, the sole question for the consideration of the Commission is whether the injury which resulted in decedent's death was "purposely self-inflicted" within the meaning of that term as employed in Sections 21, 25 and 27 of the compensation act.

The first contention of the coal company is that the employer performed every duty owing to the decedent, and was absolutely free from fault, and we assume this to be true, as there is nothing in the record to the contrary.

Under the workmen's compensation act compensation is to be allowed for injuries which occur "in the course of employment" unless the injury is "purposely self-inflicted," and it is not argued that decedent was not in the course of his employment at the time of his injury. In fact it is admitted that he was in the course of his employment.

It is also contended that decedent deliberately removed the post in wilful disobedience of orders of his superior and in wilful disregard of consequences to himself. This statement is, perhaps, too strong to be warranted by the facts in the case, but for the purpose of this discussion it may be assumed that the post had been removed by the employe, that he resumed work under the unsupported draw slate, and that he did this in disobedience of his superior's orders. If the employe so conducted himself, it seems to us that the most that can be assumed is that he was guilty of negligence—that is to say, he did not exercise that degree of care which the circumstances called for, and under the common law he would have been guilty of contributory negligence and assumption of risk. It must be remembered, however, that the very object of this law was to obviate such defenses. The act was passed for the promotion of the general welfare, and in order to accomplish this it was deemed necessary by the General Assembly to allow compensation, no matter whether the injuries were or were not due to the negligence of the

employe. It was treated as being beneficial to the public at large to compensate the maimed and injured in order that they might not become public burdens. The workman himself is a component part of the state, and the product of his labor is economically beneficial thereto. If he were to bear the whole of the loss occurring in case of his injury, it might result in his becoming of necessity the recipient of public charity, and it seemed much better to have the industry itself bear this charge than to place the injured person under the humiliation of accepting charity.

This argument is especially applicable to those cases where the workman has been killed. His widow and children are entitled ethically, morally and economically to some care upon the part of the state, and the representatives of the latter have considered that these losses should be borne indirectly by the industrial system through the medium of the state insurance fund. It is the failure to observe the distinction between the common law rendering the employer directly liable, and payment from an insurance fund, that has led to much confusion in regard to the law in question.

The state in the exercise of proper public policy has announced through the great organic law of the state the principle that laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers for the purpose of providing compensation to workmen and their dependents for death, injuries or occupational diseases occasioned in the course of such workmen's employment. See Article 2, Section 35 of the Constitution.

Prior to this amendment to the constitution the Supreme Court of this state had upheld the same theory upon the ground of public policy. *State ex rel Yaple vs. Creamer,* 85 O. S., 349. The law passed in conformity to the constitutional mandate was not an employers' liability act, but, on the contrary, was the establishment of an insurance system to be maintained by the state. In this respect it is analagous to private insurance companies, and must be governed by the same doctrine as that announced with reference to certain classes of policy written by the ordinary accident and life insurance company. The sole question is whether or not the injury occurred in the course of employment, unless it comes within the exception hereafter referred to. When it is found that the injuries so occurred payment should be made without regard to any defense which might have been maintained by the employer had he been sued at common law.

It is said that the decedent knew the danger to which he exposed himself by the removal of the post, and it is inconceivable that he should have worked for even a small fraction of time without having had occasion to set stone posts, thereby becoming aware of the dangers incident to the failure so to do. It is said by the employer that the logical and irresistible conclusion is that the injury was "purposely self-inflicted." The argument seems to be that the only method by which purpose or intention is to be determined is that there is a presumption that one intends the natural and probable consequences of his own acts, and that the decedent knew that the natural and probable consequence of his removal of the stone post would be to cause the roof to fall, the natural result of which would be to cause his injury or death. It seems to us that the unsoundness of this logic is apparent when we come to consider the fact that while the natural and probable consequences of the removal of the post would be, as was known to decedent, the fall of the roof, yet it does not follow that he had the right to assume, or rather was chargeable with the knowledge that the fall of the roof would injure him. But, legally and logically, there is a still more serious objection to this form of reasoning for when one is placed in the dangerous position in which decedent was, he was at common law presumed to understand the dangers of the situation when he

was familiar with the work, and the only knowledge with which he would be chargeable in this case was that the natural and probable result of his removal of the stone post was the creation of a dangerous condition in the roof of the mine—in other words, he was chargeable with knowledge that the roof might fall, but in order to carry this presumption any further it will be necessary to create another inference, viz.:—that if he were chargeable with knowledge that it might fall it must be presumed that he knew that it would fall, and that if it did fall he must be presumed to know that it would injure him. This is the building of one presumption upon another, which is not sanctioned by the law. If it could be presumed that because one did something which rendered his place of work dangerous he had the intent to cause everything which might result from that single act, then there would possibly be some merit in the contention, but that is not here the case. In fact, the evidence itself fully develops the contrary intention.

On page 4 of Exhibit "A," Mr. Harris, the assistant mine boss, says:

> "But many of the miners risk their draw slate if you do not watch them, *as they want to get up their coal before taking down the draw slate.* As I left him he started to take up his bottom coal.

If it can be inferred that the decedent removed the stone post, I think that it may safely be assumed that he did so for the purpose of enabling him better to perform his work. The post probably interfered and he removed it. He was simply "risking his draw slate," to use the expression of Mr. Harris.

The word "purposely," as used in the statute, must mean that the person acting must have before himself the object of injuring himself in doing what was done. In other words, a self-inflicted injury must have been the aim and object causing the decedent to remove the stone post.

In 32 Cyc. 1270 "purpose" is defined as "that which a person sets before himself as an object to be reached or accomplished; and end or aim to which the view is directed in any plan, measure or exertion."

In *Sebasta v. Court of Honor,* 109 N. W., 166, it is said:

> "To constitute suicide by one not insane, there must be intentional self destruction."

That seems to us to be an excellent definition of suicide, and if it be true as a proposition of law, the corollary must be that intentional self destruction means suicide. If intentional self destruction means suicide, why does not "purposely self-inflicted" carry with it the unquestioned design of self injury, that is an inward purpose of injuring one's self—a purpose that must be shown by evidence. In this case the injured person died as a result of his injuries, and will anyone contend that the evidence introduced shows suicide? We think that the answer must be in the negative, and yet if the argument of counsel for the employer be followed the necessary conclusion would be that the decedent intended to destroy himself, because if we can presume that he intended to injure himself, we must necessarily assume that he intended every consequence of that injury which in this case was death.

When one comes to consider presumptions in a case of this kind, it must be borne in mind that when injuries result a presumption arises in favor of the instinct of self preservation, and the known disposition of men to avoid injury and personal harm to themselves constitute *prima facie* evidence that the injured person was at the time in the exercise of ordinary care and was free from contributory negligence. In case death results the law presumes that the decedent exercised that measure of care which it was his duty to exer-

cise. *Adams v. Mining Co.,* 11 L. R. A n. s., 845, citing numerous cases in note thereto; *Cincinnati etc. Co. v. Hester,* 12 C. C., 350, 358; *Wallace v. Spellacy,* 8 N. P. n. s., 41 (affirmed without report 79 O. S., 438).

Mr. Justice McKenna in *Railroad Co. vs. Ladrigan,* 191 U. S., 461, says:

> "We know of no more universal instinct than that of self preservation—none that so insistently urges to guard against injury. It is its motive to exercise in the fear of pain, maiming and death. There are few presumptions based on human feelings or experience that have surer foundation than that expressed in the obstruction objected to."

Now if that doctrine be true of contributory negligence it necessarily follows that it is a *fortiori* true of cases where the charge is that the decedent purposely injured himself. In contributory negligence he may have been guilty merely of inattention, and in assumption of risk he may not have been sufficiently quick of perception to appreciate the dangers of the situation, even though he should have appreciated such dangers,, but it is impossible to conceive of a case where one purposes self injury through carelessness or lack of perception. He must have in his mind the design to bring about the thing which his act actually produced and we must assume that the instinct of self preservation would move him not to do that which he positively knows would bring about his hurt or death. In other words, if he be presumed not to do that which might injure him, he must with stronger reason be presumed not to do that which will necessarily injure him. This doctrine is frequently invoked in insurance cases, among which may be mentioned *Insurance Co. vs. Jordan,* 11 Ins. L. J., 475, decided by the Ohio District Court, wherein it was held that when a person is found drowned, the presumption is that it was accidental rather than voluntary. See extended note to *Clark vs. Traveling Men's Ass'n.,* 42 L. R. A. n. s., 631, 636.

From the foregoing it seems to be apparent that the presumption in this case is that the injury was accidental, and the evidence is not sufficient to rebut that, at least to the extent of showing that it was purposely self inflicted. In fact, we think there is strong reason for saying that in this case there has been at most a high degree of negligence, which, of course, does not constitute wilful misconduct.

Reese vs. Coal Co., 4 W. C. C., 17.
Reeks vs. Kynoch, 4 W. C. C., 14.
Granich vs. Beger Refinery, 4 B. W. C. C., 452.
Bedore vs. Ice Delivery Co., Mich. Industrial Board Oct. 15, 1913.
Cochran vs. Insurance Co., Mass. Accident Board.

Questions of this kind are always of fact, even when a rule of the employer has been broken. *George vs. Coal Co.,* 2 B. W. C. C., 125.

The last cited decisions are under acts wherein *"wilful misconduct"* exempts from liability, and much stress has been laid upon the law of these states in the brief of counsel for the employer. It seems to us that the citation of these cases but tends to add to the force of our reasoning in that it distinctly shows that the Ohio law intended to adopt a different rule from that called for by the statutes of the other states, in that the language is made much stronger in favor of the employe.

An examination of a number of the compensation acts will, we think render clear the contention that no misconduct falling short of a deliberate

intent to inflict severe injury upon the actor will be considered as having been done with the intention of purposely self inflicting an injury.

The English compensation act (6 Edw. 7 C. 58, Sec. 1 (2) c. provides:

> "If it is proven that the injury to the workman is attributable to the serious or wilful misconduct of that workman, any compensation claimed in respect to that injury shall, unless the injury results in death or serious or permanent disablement, be disallowed."

The California act provides that the injured employe shall be entitled to compensation:

> "When the injury is approximately caused by accident either with or without negligence, and is not so caused by the *intoxication* or the *wilful misconduct* of the employe."

The Connecticut act provides that:

> "No compensation shall be paid when the injury shall have been caused by the *wilful or serious misconduct* of the employe or by his *intoxication.*"

The Iowa act provides that no compensation shall be allowed when the injury is caused:

> *"By the employe's wilful intention to injure himself* or to wilfully injure another; nor shall compensation be paid to an injured employe if injury is sustained where *intoxication* of the employe was the *approximate* cause of the injury."

The Kansas act provides that compensation shall not be paid:

> "If it is proven that the injury to the workman results from his deliberate intention to cause such injury, or if he wilfully failed to use a guard or protection against accident required pursuant to any statute and provided for him, or a reasonable and proper guard and protection furnished to him by his employer, or solely from his deliberate breach of statutory regulations effecting safety of life or limb, or from his intoxication."

The Massachusetts act provides that:

> "If the employe is injured by reason of his *serious and wilful misconduct* he shall not receive compensation."

The Michigan act provides:

> "If the employe is injured by reason of his *intentional and wilful misconduct* he shall not receive compensation under the provisions of this act."

The Minnesota act provides:

> "Compensation shall be denied where accidents are *intentionally self-inflicted* or where the *intoxication* of such employe is the natural or approximate cause of injury and the burden of proof of such facts shall be upon the employer."

The Nebraska act provides:

"No compensation shall be paid for injuries resulting in any degree from *wilful negligence,* as hereinafter defined, by the employe."

It is further provided that:

"for the purpose of this act 'wilful negligence' shall consist of:
1—Deliberate act.
2—Such conduct as evinces reckless indifference to safety, or
3—Intoxication at the time of the injury."

The Nevada act provides:

"No compensation shall be allowed for an injury caused by the employe's wilful intention to injure himself or to wilfully injure another; nor shall compensation be paid to an injured employe if injury is sustained while intoxicated."

The New Hampshire act provides that the employer

"shall not be liable in respect of any injury to a workman which is caused in whole or in part by the *intoxication, violation of law* or *serious or wilful misconduct* of the workman."

The New Jersey act provides that compensation shall be denied:

"when the injury or death is *intentionally self-inflicted,* or when *intoxication* is the natural and approximate cause of injury, and the burden of proof of such fact shall be upon the employer."

The New York act provides that compensation shall not be paid:

"where the injury is occasioned by the *wilful intention* of the injured employe to bring about the injury or death of himself or another, or where the injury results solely from the *intoxication* of the injured employe while on duty.

The Oregon act provides that:

"if the injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death compensation shall not be allowed."

The Rhode Island act provides:

"no compensation shall be allowed for the injury or death of an employe where it is proven that his injury or death was caused by his *wilful intention* to bring about the injury or death of himself or another, or that the same resulted from his *intoxication* while on duty."

The Texas act denies compensation when:

"the injury was caused by the *wilful* intention of the employe to bring about the injury."

The Washington act provides that compensation shall not be paid:

> "If the injury or death results to a workman from the *deliberate intention* of the workman himself to produce such injury or death."

The West Virginia act provides compensation shall be denied where the injury is caused

> "by the *wilful misconduct* or the *intoxication* of such employe."

The Wisconsin act provides that all injuries shall be compensated:

> "where the injury is approximately caused by *accident* and is not *intentionally self-inflicted.*"

To say that an injury is "purposely self-inflicted" is to require a much higher and more onerous degree of proof than to say that an injury has been caused by the "wilful misconduct" of the employe.

The workmen's compensation act must be broadly interpreted in harmony with the main purpose of providing support for those dependent upon the deceased employe. In other words, it must not be given a narrow and restricted meaning. *Coakley vs. Coakley,* 102 N. E., 930.

We do not think that the injuries of the decedent were purposely self-inflicted within the meaning of that expression as used in the compensation act. It follows that the dependents are entitled to compensation.

Compensation is awarded in the sum of $6.02 per week for the full period of 312 weeks, payable to the widow and the minor children under sixteen years of age. Funeral expenses in the sum of $72.00 are also ordered paid.

The Director of Claims is hereby directed to issue the usual form of order in such cases.

RE. CLAIM NO. 37199.

LOUIS LEWARE, *Claimant.*

(August 21, 1914.)

Trachoma is a disease and not an injury within the meaning of the Workmen's Compensation Act.

STATEMENT OF FACTS.

Louis Leware claims to have been injured on May 23, 1914, while in the course of his employment as an employe of The Trussed Concrete Steel Company, of Youngstown, Ohio. He claims that the injury occurred while he was working on a serating press in department "G" of the Youngstown works of The Trussed Concrete Steel Company, and that the injury consisted of a piece of steel in his right eye; that on account of such injury, he ceased work on the 25th day of May and returned to work on the 13th day of July.

The application states that claimant could have returned to work on June 5th, 1914, but for a disease called trachoma for which he was treated until July 13, 1914, the date on which he returned to work.

The attending physician, who first saw claimant on May 25, 1914, two days after his alleged injury, says that there were six trachomatic ulcers on the cornea of the claimant's eye, and adds that claimant says that there were several pieces of steel removed from his eye at the office of his employer.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

We are not satisfied from the proof on file that claimant's disability or any portion thereof resulted from an injury in the course of his employment.

Trachoma is recognized as a disease by the medical profession, and it is said not to be brought about by an injury to the eye or by foreign particles getting into the eye.

We think we are justified in concluding that the whole period of claimant's disability was caused by trachoma and not by an injury; at least, no evidence has been presented warranting us in concluding that claimant is entitled to compensation for an injury.

We dispose of this claim in accordance with the provisions of Rule 12 of our Rules of Procedure, because it does not clearly appear that claimant is entitled to compensation.

RE. CLAIM NO. 35163.

MRS. ALFRED HARIES, ET AL., *Claimants.*

(August 24, 1914.)

Cerebral hemorrhage occurring to an employe while in the course of his employment, where it does not appear that it was occasioned or contributed to in any way by unusual effort, or strain on the part of the employe, but solely on account of the disease known as arterio-sclerosis is not an injury within the meaning of the Workmen's Compensation Act.

STATEMENT OF FACTS.

Alfred Haries, Sr., of East Liverpool, Ohio, died on May 12, 1914, leaving surviving him the claimant, his widow, and five children, the eldest of which is twenty years and the youngest of which is six years of age, all of which, except the eldest, are alleged to have been wholly dependent upon him for support.

Decedent was employed by Haries and Nathaniel and was a bricklayer by occupation. The employer states that on May 4, 1914, at 7:20 a. m., decedent was injured, said injury consisting of "bursted blood vessel in brain" and that said injury was sustained in the following manner, viz.:

> "While in a stooping position laying brick in a kiln he suddenly toppled over against side of kiln and bruised his arm."

The official death certificate gives the cause of death as "cerebral hemorrhage" and the contributory cause as "arterio-sclerosis."

Our Chief Medical Examiner in a report to the Commission says:

> "Death in this case was due to a ruptured blood vessel in the brain and was not the result of an injury. This is the same as an apoplectic stroke and is liable to occur at any time in presence of arterio-sclerosis which this man is reported to have had."

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The medical testimony and other proof on file in this claim indicates that the unfortunate death of the deceased was due to the condition of his cir-

culatory system. Nothing appears to indicate that the nature of his employment or the thing he was doing at the time he was stricken was of such a nature as to call for any unusual exertion.

In *re claim No. 45618, Ellen Fair, et al., claimants,* decided by us on August 14, 1914, we held that where an employe died of cerebral hemorrhage or apoplexy brought on by over-exertion in chasing thieves who were attempting to steal his employer's property, he died from an injury sustained in the course of his employment, and that his dependents were entitled to compensation. In that claim, however, it clearly appeared that it was the over-exertion that brought on the attack. In the claim now under consideration no such facts appear. On the contrary it appears that the deceased's circulatory system was in such a diseased condition that death from cerebral hemorrhage might have been expected to occur at any time. The fact that the attack occurred while he was at work does not change the rule that the disability or death must result from injury as distinguished from disease.

We do not think the decedant's death was due to injury, but that it was due entirely to disease. Compensation is therefore denied.

RE. CLAIM NO. 47170.

OSCAR BERG, *Claimant.*

(August 24, 1914.)

An employe entitled to compensation from the state insurance fund cannot assign his right to receive such compensation. (*Section 41 of the compensation act construed.*)

STATEMENT OF FACTS.

Oscar Berg was injured on July 24, 1914, while employed by The City Ice Delivery Company, of Cleveland, Ohio. On August 7, 1914, he resumed his employment at the same wages he was receiving prior to his injury, the injury being one occasioning temporary disability only.

On August 19, 1914, compensation was awarded claimant for 6-7 of a week temporary total disability, amounting to $10.29.

The claimant left the city of Cleveland before receiving his compensation and his present whereabouts are unknown. Before leaving Cleveland, however, the claimant assigned to a Mrs. Bevington, with whom he boarded, any and all right he then had to receive compensation from the state insurance fund on account of his said injury. The assignment was made in writing and was made for the purpose of liquidating a board bill which he owed to Mrs. Bevington.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The proof on file with this claim calls for the construction of Section 41 of the compensation act which is as follows:

> "Compensation before payment shall be exempt from all claims or creditors and from any attachment or execution, and shall be paid only to such employes or their dependents."

This section seems to not only prohibit the attachment of compensation due to an injured employe by his creditors, but to prevent the claimant from

voluntarily assigning his right to receive compensation to another. The provision with reference to the payment of compensation that it "shall be paid only to such employes or their dependents" would seem to preclude the Commission from authorizing such payments, even in cases in which voluntary assignments of their rights are made by injured employes.

As we feel there is no doubt about the construction we have given this section being the correct one, the assignment of claimant's right to Mrs. Bevington will not be recognized but the compensation due to claimant will be paid direct to him as the statute directs.

EMILY SKINNER ET AL., *Claimants,*
vs.
THE STRATTON FIRE CLAY CO., *Employer.*

CLAIM NO. 23.
(Under Section 27 of the Compensation Act.)

1. The provisions of Section 26 of the compensation act relate solely to civil actions for damages, and not to proceedings before The Industrial Commission of Ohio. (*Biddinger vs. The Champion Iron Co.,* decided July 1, 1914, followed.)

2. The violation by an employe of a rule of his employer does not necessarily take him out of the course of his employment. (*Stopyra vs. The U. S. Coal Co.,* decided August 19, 1914, followed.)

3. Workmen engaged in mining coal are employes of the mine owner, though the mining operations are carried on under a contract with a third party who selects and pays the workmen, where by the terms of the contract the mine owner reserves control and supervision over the working of the mine. (*McAllister vs. The National Fireproofing Co.,* decided August 31, 1914, approved and followed.)

(Decided August 31, 1914.)

STATEMENT OF FACTS.

The application for compensation states that the deceased was employed by The Stratton Fire Clay Company, that he was killed on January 3, 1914, by the fall of a roof in the mine of the coal company, leaving surviving him Emily Skinner, the widow, and five children under the age of sixteen years, viz.: Nettie Marie, aged 15; Raymond D., aged 13; David Carroll, aged 10; Virgil Jefferson, aged 8; and Albert Clinton, aged 5.

The Stratton Fire Clay Company was not, at the time of decedent's death, a subscriber to the state insurance fund, nor had it elected to pay compensation direct as provided by Section 22 of the compensation act.

An answer has been filed by The Stratton Fire Clay Company in which it admits that Skinner was employed in a mine of The Stratton Fire Clay Company and on January 3, 1914, received injuries which resulted in his death on that day. It also sets up the defense that it was not guilty of any wrong, neglect or default, that the company had made known to the miners a rule that no miner should shoot down coal in any mine in the solid and that no shooting down of coal should be done until an inbearing had been made; that Skinner was cognizant of this rule and violated the same by shooting down coal in the solid without making any inbearing; that he fired two or three shots and without waiting until the smoke had cleared away or making any examination of the roof, attempted to fire a third shot when a portion of the roof fell causing his death. Immediately before Skinner was ordered to turn the room off of the entry, the mine boss made an examination and found the place to be safe. A second defense is set up to the effect that the company lets the mining of coal in its mine to a contractor, that it has nothing to do with the employment or payment of men who work in

said mine, that it pays the contractor a certain amount per ton for the mining and delivering of the coal at its plant.

Upon the hearing it was admitted that the deceased was in the course of his employment at the time of his injury.

It was also admitted that claimants were all dependent upon the decedent for support at the time of his death.

The average weekly wage was $14.00.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

Four questions are involved in the consideration of this claim, which will be discussed and determined in their order.

A brief has been filed by the employer which discusses the question of negligence and contributory negligence. It seems to be the theory of the defendant that this procedure is to be governed by Section 26 of the workmen's compensation act which in substance provides that employers who fail to comply with Section 22 of the act shall be liable to their employes for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer or any of his officers, agents or employes, and to the personal representative of such employe where death results from such injury, the defendant being deprived of certain common law defenses. Reliance seems to be placed upon the case of *Gerthung vs. Strambaugh-Thompson Co.,* 18 C. C. N. S., 496. This case was decided under the elective compensation act of 1911 (102 O. L., 529), which contained language similar to section 26 of the present law. It must be noted, however, that that decision was rendered in a civil action and not one wherein the Industrial Commission was passing on a claim, there being no provision in the old workmen's compensation act authorizing the State Liability Board of Awards (now The Industrial Commission of Ohio) to pass upon claims of this character when the employer was not insured. The radical difference between the old law and the present act is apparent from the most cursory comparison of the two in this regard.

The following language appearing in Section 26 of the new act clearly evinces the intention of the General Assembly to include a remedy within the new law which was not comprehended by the old one:

> "and such employers shall be subject to the provisions of the two sections next succeeding."

Section 27, which is the first of the sections following 26, provides that any employe whose employer has failed to comply with the provisions of Section 22, (which provides for the payment of premiums and the carrying by employers of their own insurance) *"who has been injured in the course of his employment"* wheresoever such injury has occurred and which was not purposely self-inflicted, or his dependents in case death has ensued *"may in lieu of proceeding against his employer by civil action in the courts as provided in the last preceding section, file his application with the State Liability Board of Awards for compensation in accordance with the terms of this act and the Board shall hear and determine such application for compensation in like manner as in other claims before the Board."*

This clearly shows that in addition to resort to civil action, which was

allowed by the old law, the employe has the option of adopting another method of procedure as defined in Section 27. In other words, he is not compelled to sue at common law if his employer has not contributed and he desires to recover for the damages he has sustained as was the case under the former act. He now may apply to the Industrial Commission (which is the successor to the State Liability Board of Awards) and if that body finds that he has been injured in the course of his employment it may fix the amount of his compensation in the same manner and upon the same conditions as it would if the employer was insured. After this award has been made it is the duty of the employer to pay it within ten days and if he fails so to do action must be brought by the Attorney General on behalf of the employe for the amount of the award plus a penalty of 50%. As the present act is a compulsory one it is eminently proper and fitting that the employe should elect to treat the employer as within the compensation provisions of the law if he so desires in order to have his compensation fixed, and the penalty imposed upon the employer for failing to pay his premium is that he must pay the sum awarded with an additional penalty if he fails to comply with the finding of the Commission within ten days after notice has been served upon him. There is no language contained in Section 27 which is in any way susceptible of the interpretation that there must be a finding of negligence on the part of the employer or that there must be an absence of contributory negligence on the part of the employe. The sole burden upon the employe is that he must show that he was injured in the course of his employment and when he has shown this he can only be deprived of or prevented from receiving compensation by reason of the fact that the injury was purposely self-inflicted, hence it is very clearly apparent that this case does not call for any discussion of the principles of negligence or contributory negligence and therefore the cases cited and argument made by counsel for the company are not here pertinent. We have heretofore made a similar holding in the claim of *Biddinger, et al., vs. The Champion Iron Co.,* decided July 1, 1914.

The next question to be decided is whether the decedent was injured in the course of his employment. The averments of the mine owner are sufficient, it seems to us, to show that the injury did so occur. Besides this was practically admitted at the hearing. It is admitted that Skinner received his injuries in the mine of The Stratton Fire Clay Company by reason of the fall of a portion of the roof of such mine, it being contended however that he violated a rule of the company and thus caused his injury. The question of whether the violation of a rule by an employe is sufficient to justify the interpretation that he was not in the course of his employment has been thoroughly considered in our opinion in the claim of *Stopyra, et al., vs. The U. S. Coal Co.,* decided by this Commission, August 19, 1914, when we held the violation of rules or orders did not necessarily take the employe out of the course of employment.

Under the circumstances of this case we do not think it can be said that the decedent was not in the course of his employment at the time he was hurt. He was hired to mine coal in the mine of the company and was engaged in doing this work at the time of his injury. If he did not adopt the proper method or if he violated a rule still it cannot be contended that he was not in the course of his employment, because he was doing what he was hired to do although not in the way in which he was employed to do it. This would justify the application of the doctrine of contributory negligence or assumption of risk but those matters cannot be here considered. The evidence introduced does not establish the theory that the injury was purposely self-inflicted. The proper distinction to be observed in cases of this character has

been very lucidly discussed in *Whitehead vs. Reader,* 3 W. C. C., 40. A carpenter had been expressly ordered not to touch the machinery in the plant although it was part of his duties to sharpen machinery on a grind stone which was turned by a leather band. While he was sharpening a tool the band slipped off of the wheel. He tried to put it back and in so doing was injured. The court held that it was not every breach of an employer's order that would terminate a workman's employment. If he was acting within the scope of his employment and violated his employer's order this did not deprive him of compensation, but if he went beyond the sphere of his work, as such work was limited by the employer, and acted in violation of the employer's orders in going out of or beyond his limited employment, it may be said that he was not in the course of his employment under the latter circumstances.

This is further illustrated in *Harding vs. Colliery Co.,* 4 B. W. C. C., 269. There the miner was ordered to drill a hole from above into a seam in order to draw off gases. He asked if he might go into the seam to see if the drill was running straight and was told that he must not. Nevertheless he went and was suffocated. It was held that the accident arose out of and in the course of his employment. He was engaged in the drilling operation and therefore was doing a proper work which was within the scope of his employment. His employment was to drill the passage and he was guilty of breach of duty and of orders in trying to carry out this purpose but this latter does not render the accident any less in the course of his employment. To use a definition frequently followed by us, the decedent here was engaged in doing something which he might reasonably do under his employment at a place where he might reasonably be and during a time when he was in the service of his employer.

Another case illustrative of this is *Conway vs. Oil Co.,* 4 B. W. C. C., 392, where a workman went into a place which he knew was dangerous in order to get a pick. It was held the accident arose out of the employment. Reliance was had on *Whitehead vs. Reader, supra,* which is said to be one of the best statements of the law on this point to be found. The court say that where a servant does some other sort of work than that for which he is engaged or where he goes into territory within which he has nothing to do, he may be said not to be in the course of his employment.

In *Edmunds vs. Peterson,* 5 B. W. C. C., 157, a ship's engineer used a temporary stove to warm his cabin. He was warned not to do this at night, violated this order and was asphyxiated. It was held that the heating was necessary and an incident to the employment and the court approved the award of compensation.

The English cases of *Joyce vs. Iron Co.,* 5 B. W. C. C., 126 and *Wright vs. Scott,* 5 B. W. C. C., 431 are to the same effect.

Another question presented is as to whether the deceased was really employed by The Stratton Fire Clay Company at the time he met with the accident resulting in his death.

There is but little evidence as to the contract of employment, but there is a statement in the answer as to a mine boss examining and testing the roof of the mine. If he were an agent of The Stratton Fire Clay Company this would indicate that such company retained control and supervision over the work that was being done by the men that were employed in the mine. Then, too, it is admitted in the answer that the injuries were received in the mine of The Stratton Fire Clay Company and that the Fire Clay Company had made known to the miners the rule of the company which it is claimed that Skinner violated, so that we are inclined to believe that this admission is in itself sufficient to authorize a finding that the relation of independent con-

tractor did not arise. Surely if it had the right to make this rule it exercised such control over the employes as to justify the belief that it was their employer rather than a principal contractor who had nothing to do with them, except to hire and pay them. Recently we had a similar question before us in the claim of *McAllister vs. The National Fireproofing Co.,* (decided Augus 31, 1914), in which we held that under a state of facts similar to those here presented the mine owner was liable for compensation.

We have concluded that the arrangement between The Stratton Fire Clay Company and the person operating the mine was simply a convenient method adopted by the former for the payment for the coal taken from its mine and that the principle of "independent contractor" has no application.

The final question presented is as to the average weekly wage at the time of Skinner's decease. Without discussing the evidence at length, it is sufficient to say that we have concluded that the average weekly wage was $14.00 per week, and an award of two-thirds this amount for the full period of 312 weeks will be made.

An award of $115.50 for funeral expenses is also made in favor of T. J. Campbell, of Toronto, Ohio.

MARY MARGARET MCALLISTER, ET AL., *Claimants,*
vs.
THE NATIONAL FIREPROOFING CO., *Employer.*

CLAIM No. 83,

(Under Section 27 of the Compensation Act.)

"A," the owner of a coal mine entered into a contract with "B" to operate the mine, by the terms of which contract "A" was to furnish all posts, timbers and track material and implements and "B" was to mine the coal in a workmanlike manner, do necessary track laying and timbering, preserve the entry in good condition, do draining, etc., and furnish all labor necessary for the mining of the coal. The coal was to be placed in "A's" car as taken from the mine, and "B" was to receive from "A" a stated price per ton for all coal so taken from the mine, it being part of the agreement that "A" was to take and pay for all the coal so mined. The mining was done subject to the supervision of a mine foreman employed by "A".

"C" was employed as a miner in the mine so operated, and was killed while in the course of his employment.

HELD: That "C" was an employe of "A" and his dependents are entitled to compensation.

(Decided August 31, 1914.)

STATEMENT OF FACTS.

Thomas McAllister was killed in the course of his employment on April 28, 1914 by the fall of soap stone, slate and coal in a mine owned by The National Fireproofing Company, and operated under the supervision of Lewis A. Sims. Neither The National Fireproofing Company nor Sims were subscribers to the state insurance fund.

From the evidence adduced it appears that in April, 1912, The National Fireproofing Company of Haydenville, Ohio, arranged to enter into a written contract with the firm of Sims & McAllister by virtue of which the former leased to the latter for the purpose of mining coal, *"for the sole use of the first party"*, a mine known as "Diamond No. 2". The first party was to furnish posts and track material and to pay the second party 70c a ton for coal delivered to their cars. The second party agreed to mine the coal in a

workmanlike manner, do necessary track laying and timbering, preserve the entry in good condition, do draining and arrange for the proper circulation of air. This agreement was to remain in force until July 1, 1912 and if either party desired to terminate it within thirty days thereafter they were to notify the other on or before July 1st. If mutually satisfactory the agreement was to be extended for one year from the date last named provided both parties signed the extension. This agreement was never signed but there is testimony to the effect that it was continued until about a month before the death of decedent when McAllister retired and Sims continued to operate the mine under the former arrangement.

Mr. Sims testifies that he worked the mine under a verbal contract which was supposed to have been written but which had never been signed. McAllister simply quit work, telling Sims that he could take the contract and make out of it what he could. Mr. Sims further states:

> "We used to put this coal out, the mine run coal, on the narrow gauge cars of The National Fireproofing Company at the mine for a certain figure and this National Fireproofing Company furnished us with the tracks, posts and everything in the way of timber to work the mine.
>
> Q. Did the Fireproofing Company have a boss there to see that the work was done properly?
>
> A. They had a mine foreman there.
>
> Q. What were his duties?
>
> A. His duties were, I guess, to see that the mines were run under the orders of The National Fireproofing Company and to see that there was no coal worked out in the front part of the mines to shut off any coal at a future time that they could not get and I guess that's about all he was there for."

The witness also states that this mine foreman was not at the mine very frequently as he trusted Sims and McAllister or Sims faithfully to fulfill their contract, and as they knew everything was going properly it was not necessary for him to often visit the mine. When asked what the foreman would do when he came to the mine Mr. Sims answered that he would tell him where he thought there was coal further on in the old works that could probably be gotten out and would ascertain whether coal was there found. When asked if this foreman had gave general directions as to how the operations should be carried on and whether it was under his supervision, the answer was:

> "Well, not in all cases. I don't think it was in all cases. I think he just depended on us to get the coal out of the hill and get as much coal out as we possibly could without closing any coal in to lose any coal. About as near as I can understand, that was his business there."

There was also testimony that the foreman had authority over Sims in that they *"were first to operate the mines under his orders"*.

With reference to the employment of the decedent Sims testified as follows:

> Q. You claim McAllister was your employe and not the employe of the company?
>
> A. Yes sir, I hired him. The company did not have anything to do with paying him off or hiring him.

Q. You made the agreement as to how much he was to get and kept his time, or did they keep his time?

A. I kept it.

Q. And did you pay him directly, or was he paid out of their office?

A. I paid him directly, me and McAllister, when he was in the partnership, — either of us was paymaster."

Decedent left surviving him a widow, Mary M. McAllister, and two daughters, Laura and Ella, aged 20 and 18 years respectively, all of whom are alleged to have been wholly dependent upon him for support at the time of his death. The dependency of the widow and daughters is not questioned.

Decedent earned about $650.00 during the year immediately preceding his death so that his average weekly wage may be taken to be $12.50.

BOOTH, KEATING, PETERS & POMERENE, *for the Employer.*

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

This proceeding is brought under favor of Section 27 of the Compensation Act and the important question involved is whether the decedent, McAllister, was an employe of Sims or of The National Fireproofing Company at the time he was killed. If he was Sims' employe, that is the end of the claim of his dependents against The National Fireproofing Company. If, on the other hand, he was an employe of The National Fireproofing Company the claimants are entitled to compensation, as all other jurisdictional facts are conceded.

Whether McAllister was an employe of The National Fireproofing Company depends upon whether Sims, under his working arrangement with the Company was its employe or an independent contractor. If the doctrine of "independent contractor" applies with full force, then Sims cannot be considered a mere employe, but if the arrangement between him and the Company amounted to nothing more than a convenient methed of making payment for coal mined from the company's mine, he should be regarded as its employe.

In considering this question the contract between the Company and Sims should not be regarded as a lease of the mine. It was simply a working agreement by the terms of which the company paid Sims a stipulated price for all coal taken from the mine.

The principle test in matters of this kind is whether the owner of the mine exercised or had the right to exercise any control or supervision over the manner of the doing of the work — or, in other words, had he authority to supervise the means rather than the result. Of course, there are certain other elements which may be taken into consideration such as the character of that supervision, whether the contract was to complete a particular piece of work or whether it was continuous rather than by the job, whether the work was to continue for a definite time or was indefinite in its measure.

In the claim now under consideration the evidence is not definite as to the real nature of the contract. The written agreement is not very specific in its nature, but it does develop the fact that The National Fireproofing Company was to receive all of the coal and that the contract was to be for a fixed period. As this contract, however, was not signed and subsequently

the original contracting parties were changed in that Sims took the place of Sims & McAllister, it is difficult to learn just what Sim's arrangements with the company were. One element that should be determined is whether The National Fireproofing Company had the right to terminate the alleged contract with Sims at any time. If it had, this would very strongly indicate that the company retained the power of control over Sims, the work and his employes, because the right to discharge usually carries with it the power of complete supervision, for if Sims was not doing the work in the way in which the company desired to have it done they would immediately get rid of him. From the evidence quoted it will be observed that the mine foreman of The National Fireproofing Company directed Sims where he thought coal could be gotten, the inference from this being that he practically directed coal to be mined at that point which would surely indicate some control over the work and employes, and Mr. Sims' testimony strengthens this when he says:

> "The duties of the foreman were to see that the mine was run under the orders of The National Fireproofing Company".

If the mine was run under the orders of The National Fireproofing Company, of course, it was under their control.

The same conclusion must be derived from question 25 and the answer thereto because the witness testifies, when asked if the foreman gave general directions as to the operation of the mine and whether it was under his supervision to see that the work was done properly: "Well, not in *all* cases." If he did not exercise this control in all cases, but did exercise it in some cases, which he must have done from the answer, it would seem to follow that he had the right to exercise this control in every instance and his mere failure to do so would not altar the relationship of employer and employe. It is the authority and not the execution of it that determines the question of control in cases of this character.

In distinguishing employe from independent contractor Judge Ranney states that:

> "In the one case the principal selects the servant or agent with a view to his skill and care, and not only retains control over all his operations but also has the power to dismiss him at any time for misconduct. In the other the contractor assumes this position leaving the employer no control over the work or the persons by whom it is executed, but simply the right to require the thing produced or the result attained to be such as the contract has provided for."

See *Carman vs. Railroad*, 4 O. S., 399, 414, 415.

In *Pickens, et al. vs. Diecker*, 21 O. S., 212, it was held that it is not necessary that control should be exercised if the employer had authority so to do, and the fact that he left the duty to the discretion of another would not alter the relations of the parties to such an extent as to justify the inference that the relation of independent contractor arises.

In *Cincinnati vs. Stone*, 5 O. S., 38, a rule of almost universal application is laid down to the effect that where the employer does not retain the control over the mode and manner of the performance of the work, the case is one of independent contract, but where he does retain the control and direction over the mode and manner of doing the work the relationship is that of principal and agent. Of course, this case was not one involving the liability of employer to employe but of injury to third persons, but, never-

theless, the rule there laid down seems to us to establish a correct line of demarcation between the two situations.

See also *Hughes vs. Railway Company,* 39 O. S., 461.

In *Andrews Bros. Co. vs. Burns,* 22 C. C., 437, it appeared that a rolling mill company employed a boss roller who hired his own assistants his compensation to be an agreed price per ton for labor performed, the work to be under the direction of the general superintendent of the rolling mill. The relation between the company and the employe was held to be that of employer and employe. A reading of this case will indicate that the theory of the court was that the general superintendent had power and authority at any time to dismiss the boss roller or any of his assistants, the employer thus retaining the right and power of direction and controlling the time and manner of executing the work.

Toledo Stove Co. vs. Reep, 18 C. C., 58, presents a state of facts which show that the stove company was engaged in building stoves for the market. They took the iron and molded it into different shapes and castings and put them together in the form of complete stoves. One Soden was to attend to the mounting of these stoves and furnished his own men therefor, he to receive a certain price for each stove and the company to care for and repair machinery. The practical result of this arrangement was that Soden received a percentage on the work of the men mounting the stoves as pay for his services. The evidence also developed that the Superintendent of the company was present almost every day examining and watching the work of mounting. The court distinguished independent contractor from that of employe in that it must be a contract for a job. This distinction, however, is not the most important or soundest, as will hereafter be made apparent. The court held that Soden was the foreman of the mounting room and in employing and discharging men he acted solely as the agent of the company.

In *The Standard Mill Work Co. vs. Bick,* 14 C. C. n. s., 425, a judgment was recovered against the company by a minor. At the time of the accident one E. C. Schwartz was operating a part of a factory for the construction of window blinds under a contract that the company should furnish the plant, machinery, oil and material and Schwartz was to employ all of the workmen, the company to have no control or supervision over them. Upon this statement of facts the court held:

> "One is not an independent contractor who operates a part of a manufacturing plant, under an arrangement whereby he is to hire and pay and have entire control of all the employes at work in that portion of the plant, and the owner is to furnish the material for manufacture together with the use of the plant."

It seems to us that the essential questions in a case of this kind are whether the alleged independent contractor may do as he pleases in getting the work out, whether any of the details are suggested or looked after by the employer, whether the latter exercises any control except as to the result and whether the premises were really surrendered to the so-called independent contractor.

In *Barg vs. Bousfield,* 65 *Minn.,* 355, a person was paid a fixed price for doing piece work. He hired his employes, paid them and retained the profits or losses which were the difference between the contract price and the cost of doing the work, which was done in a room of the defendant's factory, they furnishing the machinery, power and material. Their superintendent had the right to direct how things should be done and when. If the employe

did not obey orders he could be discharged. The court held that while he was to some extent a contractor yet the jury was justified in holding that he was not so far an independent contractor as to exempt defendants from liability.

In *Lattorre vs. Stamping Co.,* 41 N. Y., Supp., 99, it was held to be a jury question when the supervisor of a department was paid in gross for articles turned out, he paying his subordinates out of the sum so received, his testimony disclosing that he was only a foreman and under a superintendent.

Iron Co., vs. Cray, 19 Ind. Appl., 565, is very similar to the Andrews Bros. case — *supra,* the conclusion being the same.

An operator of a lathe was paid by the quantity produced, and had the right to employ and discharge persons needed to produce the work. The only control retained was as to the manner and mode of doing work and of the men. It was held the relationship of independent contractor did not exist. See *Barclay vs. Lumber Company,* 93 Pac., 430.

In *Knicely vs. Rairoad,* 61 S. E., 811, it was distinctly stated that the fact that the work is done by the job is not conclusive that the relation is that of independent contractor. It is interesting to note that in this case it was held that there was no question that the alleged independent contractor was an employe and that by no process of reasoning could it be said that his employes did not stand in as good a position as did he. In other words, if he himself was an employe of the principal his servants must also be said to be such employes.

There are also decisions to the effect that the relation of employer and employe continues as long as the employer reserves *any control or right of control over the method and manner of doing the work or the agency by which it is to be effected: Fell vs. Coal Co.,* 23 Mo. App., 216.

Ordinarily the principle element to be taken into consideration in determining whether the relation of independent contractor exists, is whether the principal contractor retains or assumes direct control over the workmen of the alleged sub-contractor. See Reugg Employers Liability and Workmen's Compensation 76. *Vanplew vs. Iron Co.,* 1 K. B., 851 (1903).

It is immaterial whether this right of control is exercised, the dominant feature being whether it exists. Merely because appliances are furnished by the principal contractor is not sufficient to show that the employe is a servant. *Fuller vs. Bank,* 15 Federal 875. Nor does a provision precluding the use of the name of the principal contractor show that the relationship of independent contractor arises. *Singer Co. vs. Rahn,* 132 U. S., 518.

Reference to a few of the mining cases wherein the doctrine of independent contractor arises will throw some light upon the question to be determined.

In *Employers' Indemnity Co., vs. Kelly Coal Co.,* 156 Ky., 74, the owner made a contract with one Ramsey, whereby the latter was to get out coal from part of defendant's mine and deliver it at a specified price per car, the cars and mules being furnished by the mine owner who had the right to see that the work was done according to its rules. The men were hired by Ramsey but paid by the company, although the sum paid was charged to Ramsey and deducted from his compensation. There was no stipulation as to the company's right to discharge his men, who looked to the company for their pay. There was evidence tending to show that two men had been discharged at the instance of the mine foreman. Ramsey was held to be nothing more than a mine boss. This case contains a discussion of *Interstate Coal Co. vs. Trivett,* 155 Ky., 795, where the person getting out the coal under a similar

contract was held to be a servant although he paid the employes. Except in this regard the court says that he did just what other employes usually did.

Curvin vs. Grimes, 132 Ky., 555, is also cited in this decision. There the owner leased to another part of a mine, the latter to hire his own men and operate that part of the mine free from the control of the owner except that general supervision was reserved over the operation. No person objectionable to the owner was to be employed. The miners were paid by him out of the compensation to the person with whom he had the contract. The evidence was held to show that the owner was in a general sense the operator of the whole mine.

From this it will bee seen that there are certain elements in these cases which pertain to the matter in hand if the inference which we have drawn from the testimony in this case be correct. It appears that The National Fireproofing Company did exercise supervision over the mine and its operation, and the mere fact that a contract which really does not seem to have been in force, was called a lease is of no importance. If the company had the supervision which we infer that it had, it would seem to have the implied power to discharge men which, while not decisive, is an element that may be considered. *Railroad Co. vs. Juneman,* 71 Federal, 939.

If the third person is to get out the coal and deliver it to the mine owner at a specified price, he to furnish his own tools, labor and other appliances, the means and details being subject to his exclusive control and management, all assistants to be hired and paid by him and no control or authority over the men being reserved by the owner, he is an independent contractor. *Harris vs. McNamara,* 97 Ala., 181. *Smith vs. Belshaw,* 89 Calif. 427. In the former case, however, it was later held that if the bank boss had control of the work the relationship of employer and employe existed. These two cases show the proper line of demarcation.

Where the mine owners reserve the power of determining when and where dangerous rock shall be removed and give directions as to where pillars shall be left and timbers placed, the owners are responsible. *Lake Superior Iron Co., vs. Erickson,* 39 Mich. 492.

A late and very interesting case is that of *Pottorff vs. Mining Co.,* 122 Pac., 120, recently decided by the supreme court of Kansas. Under the contract there the owner, according to the court, could have voided the contract whenever the working of the mine was not satisfactory to him. This was held to be destructive of that degree of independence necessary to constitute one an independent contractor, as it carried with it the right to compel the means and method to make the conduct of the work agreeable to the company. There, as in the case now under consideration, the contract did not definitely state this yet the company could annul the agreement if its directions were not observed.

If the mine foreman had the right, as Mr. Sims states, to see that the mine was run under the orders of The National Fireproofing Company, this is indicative of the fact that Sims might be discharged and the contract set aside if those directions were not observed. This would include the right to interpose whenever negligent methods were adopted by the contractor, and proper care might be compelled under such an arrangement according to the reasoning of the court in the case just cited. This is equivalent to the right of discharge, which, as stated by the court, destroys independence. In the Kansas case it was held that such a contract was no defense to an action brought upon the theory that the employe of the alleged independent contractor was not an employe of the mining company. This decision was rendered in full recognition of the fact that mere inspection did not necessarily

operate to prevent the application of the doctrine of independent contractor. the following from the syllabus covers this point:

> "An employer may make himself liable by retaining the right to direct and control the time and manner or means of executing the work, although he may inspect and supervise to the extent necessary to produce the result intended by the contract without incurring such liability."

In cases of this kind the following matters may be taken into consideration although we do not think the evidence here necessarily calls for the application of such doctrine. If the employment of an alleged contractor is a mere subterfuge to protect the coal company from liability it is nevertheless liable as employer. *Coal Co., vs. Morehead,* 126 Pac. 1033. Also, the financial responsibility of the so-called independent contractor may be taken into consideration although it is not decisive. The fact that the work to be done is inherently dangerous also has some bearing upon the question. In the case last cited it was held that mining was not so dangerous as to obviate the doctrine of independent contractor, although one judge dissented on this theory.

See *Covington & Cincinnati Bridge Co.* vs. *Steinbrock,* 61 O. S. 215; *Circleville vs. Nueding,* 41 O. S. 465; and *Railroad vs. Morey,* 47 O. S., 207.

Whether coal mining is such dangerous work that a contract for the operation of a mine should constitute an exception to the general rule of independent contractor we do not find necessary to determine, as we think Sims was simply an agent or employe of The Fireproofing Company.

It follows that McAllister was also the company's employe, and compensation is awarded in the sum of $8.33⅓ per week for the full period of 312 weeks, beginning with the date of the death of the deceased. The sum of $65.00 is awarded as funeral expenses, and a physician's bill of $5.00 is approved.

LUCINDA WHITE, ET AL., *Claimants.* vs. THE SCIOTO LAND COMPANY, *Employer.*	CLAIM NO. 77. (Under Section 27 of the Compensation Act.)

1. A father and his son were employed by a land company, the father's duty being to care for a small barn and the horses stabled therein, to feed and clean them and hitch them up for the farm foreman, milk the cows, mow the lawns and do other work as he was directed to do by the officers or foreman of the land company, and the son's duty being to take care of a large barn in which were stabled about 36 horses and a Jersey bull, it being the son's duty to feed and care for the stock, clean the stable and do anything he was directed to do by the officers of the land company or its foreman, and in the performance of their respective duties the father and son occasionally assisted each other with the knowledge and acquiescence of the land company and its officers. The father was found unconscious and fatally injured in the barn of which the son had supervision, his ribs being broken and breast crushed, from which injuries he died. There were no eye witnesses to the injury.

The deceased left surviving him a widow and a son over sixteen years of age, both of whom were living with him at the time of his death.

HELD: That the injury was sustained in the course of employment.

2. The son being over sixteen years of age there is no presumption that he was dependent upon his father for support.

3. The widow, living with her husband at the time of his death, is presumed to have been wholly dependent upon her husband for support at the time of his death.

(Decided September 1, 1914.)

STATEMENT OF FACTS.

Hiram White was on the 12th day of May, 1914, in the service of The Scioto Land Company, and on that date he received injuries from which he died on the same day, leaving surviving him the claimants, Lucinda White, his widow, and Orley White, a son, both of whom were living with him, the three constituting a family.

The Scioto Land Company is engaged in farming about 3,500 acres of land in Hardin County and had employed the decedent to perform certain duties which seem to be in dispute. On May 12th, at about six o'clock in the evening the decedent entered a large barn belonging to the Land Company and a short time thereafter was found unconscious and fatally injured in the barn. His ribs were broken on the right side and his breast crushed. There were a number of horses and a jersey bull in the barn at the time and there cannot be much question that he was knocked down and gored by the bull and trampled upon by the horses.

Mr. Edwards, the General Manager of the Land Company, states that:

> "White was employed to take care of a little horse barn here, and the horses in there, and clean them, and hitch up for himself and the foreman, and milk the cows, and make the garden and take care of it, and mow the lawn and any other chores or work that I wanted done."

In this small barn, which is about 200 or 300 feet from the large barn two horses are kept. About 36 horses are stabled in the large barn which was taken care of by William White, a son of the decedent, whose duties were to feed the horses, clean the stable and do anything that he was told to do at the large barn. It is stated that the decedent did anything and everything that the general manager or foreman wanted done, both of the latter giving orders to the decedent regarding the doing of these chores. The general manager also states that White had no business at the barn where he was injured and he did not know what White was doing there, there being nothing that the foreman knew of in the line of his employment in or about said large barn. The general manager states on cross-examination that White was not forbidden to go into the barn nor any other place he wanted to go; nor did he have any specified hours to work on the place. In fact none of the employes were told to stay away from the large barn.

Clark Crawl, the foreman of the company, testified that he knew that White went to the barn when the bull was led in at about four o'clock on the afternoon of the accident. This witness corroborates Mr. Edwards in his statement that White was hired to take care of the small barn and to do any other things that Mr. Edwards or the foreman requested him to do. When asked however if Hiram White had any work in the big barn Mr. Crawl testified: —

> Only as he helped his son do this work.
>
> Q. Was he employed to help this son?
>
> A. In a way, yes. He was employed and they were to work together in getting these horses in and out of the barn when they turned them in and out of pasture.
>
> Q. Was he employed to do anything else around that barn except to help get the horses in and out of the pasture during the season, unless you gave him special orders?
>
> A. No. We gave him no special orders. If he saw fit to help his son get the hay down or clean out the barn we did not tell him to."

When asked if he had not seen White around the barn a good deal, the answer of the witness was: —

"Yes, I have seen him around there some.
Q. And never said for him to keep out?
A. No."

Al Cunningham, another employe of the land company, was asked what were the duties of the decedent. His answer was: —

"Taking care of the barn.
Q. The big one?
A. The little one. He worked in both barns but the boy worked most down there.
Q. But you have seen him working in both barns have you?
A. Yes, I saw him cleaning it out."

Mrs. White, the claimant, testified that her husband was supposed to help at both barns, he being called to the big one only when horses were to be taken care of. When asked on cross-examination if he were not employed to take care of what is known at the driving barn her answer was: —

"He would go to the big barn to help in the feeding or to help get the horses to pasture at night or in the morning. He would get up at four o'clock every morning and go to the big barn."

William White, a son of the decedent, testified that his father: —

"was to help take care of the big barn."
Q. Did your father go down to the barn every night to close up?
A. Yes sir, every evening.
Q. To close up and see that everything was all right around the place?
A. Yes sir."

He also testified that his father was supposed to help him at the big barn and that he did help there all the year round. He also admitted that there was nothing to do in the barn at the time the accident happened except to close it up and to look around to see that everything was all right. He also states that Mr. Edwards, the general manager, told his father and himself that his father was to help at both barns and do extra work. This witness developed the fact that father and son helped one another in this work throughout the year.

From the foregoing it is very apparent that there is some discrepancy between the testimony of the general manager and the foreman and that of Mrs. White and her son, but the fact remains that it is practically admitted by the foreman that Mr. White had been seen by him working at the big barn without any objection on the part of such foreman, and there is no evidence in any way tending to show that White was ordered not to work around the big barn. Therefore, on the testimony of the employer's witness and from knowledge of general working conditions under similar circumstances it is proper to assume that these employes — the father and the son — helped each other in their work, and that there was no clear line of demarcation between the duties of one and those of the other.

The Scioto Land Company, at the time of decedent's death, was not a contributor to the state insurance fund, nor had it made arrangements for

the paying of compensation direct to its injured employes or the dependents of its killed employes.

Decedent was earning $1.25 per day at the time of his death, and in addition to his stated daily wages was furnished a house and garden by the employer, so that we may consider his average weekly wage about $9.00.

F. W. DURBIN, *for Claimants,*
SMICK & HOGE, *for The Scioto Land Co.*

BY THE COMMISSION: — (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The serious question in this case is whether or not the decedent was injured in the course of his employment. In order that one may be said to be working within the scope of his employment it is not incumbent to show that he had a definite and specific order to do the particular work. By custom or permission the duties of the employe may be so enlarged as to justify the assertion that he has implied authority to do certain things which he was not really hired to do, and when he is engaged in such work he is doing that which his employment impliedly calls for. In other words, the scope of the servant's duties is not confined to what he was employed to perform but he may with the knowledge and approval of his employer or the superior servants of his employer perform other work which may be said to be within the scope of his duties. If upon other occasions he engages in work similar to that which he was doing at the time of his injury, it may be inferred that there has been an enlargement of his regular work by acquiescence. The fact that the injured employe was engaged in other than regular work at the time of his injury cannot destroy the employer's liability when it is shown that work other than the regular assigned duties was customary among employes of such employer. *East Line, etc., vs. Scott,* 5 S. W., 501.

As throwing some light upon this question see also *Toledo, etc., Co. vs. Pfisterer,* 26 C. C., 669.

It has been held in *Dixon vs. Manufacturing Co.,* 68 S. E., 643, that the scope of the servant's duties is determined not only by what he was employed to do but also by what he actually did with his employer's knowledge and consent, and one performing the same services he was in the habit of performing is not a mere volunteer.

This has been well expressed in *Miner vs. Telephone Co.,* 75 Atl., 653, wherein it was held that the voluntary offer of a willing servant to make himself useful in a matter not covered by any expressed command, does not, as a matter of law put him outside the limits of his employment, even though the proffered service is not expressly approved in words. This doctrine is very frequently in vogue in cases where employes change places. See *Belton Oil Co. vs. Duncan,* 127 S. W., 884. This is illustrated in a workmen's compensation case arising in Ireland and reported under the name of *Henneberry vs. Doyle,* 5 B. W. C. C., 580. A workman was employed as a barrowman in the unloading of a ship. Other men were employed by a ship broker as tippers. The barrowman changed places with a tipper and met with an accident. It was shown that this practice had been frequently followed, was known to and not forbidden by the employers. It was held that the accident arose out of and in the course of employment. Cherry, L. J., says in this case: —

> "There have been a number of cases which have come before the courts where a man originally employed to do some one definite thing in the employer's service does, in the course of his duty, occasionally deviate from that, and does something else for the benefit of his employer. The test then is, did the employer know of this and sanction it. If he did, the man was acting within the course of his employment; if he did not, the man had disobeyed orders and was outside the act."

In *Greer vs. Lindsay Thompson,* 5 B. W. C. C., 586, a woman was employed to clean certain machinery. She found a guard removed from another part of machinery, which it was not her duty to touch, and proceeded to clean that. The machine started and she was injured, but, nevertheless, it was held she was entitled to recover. In deciding the case the court allowed the fact that there was no restriction placed upon her against cleaning that part of the machinery and there was no evidence to suggest that she was meddling or wilfully disobeying her employers.

Other cases might be cited illustrating this doctrine but we do not regard it as here necessary in view of the frequency with which the meaning of the phrase "in the course of employment" has been announced by this Commission. At the risk of reputation, however, we again wish to call attention to the admirably expressed statement of Lord Lorbourne in *Moore vs. Manchester Liners,* 79 L. J., K. B., 1175, wherein he says: —

> "I think an accident befalls a man 'in the course of' his employment if it occurs while he is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time."

Taking the evidence as a whole it seems to us clear that the land company, if it did not directly authorize decedent to work in and about the large barn, was chargeable with knowledge that he did assist his son at the barn and by failing to in any way object tacitly authorized him to continue so to do. It may fairly be said that he might reasonably be at the barn on the evening in question for the purpose of seeing that everything was in proper shape and of closing the barn. Indeed it may be said that when the employer permitted the employes to do work of this character without objecting, the workman in continuing so to do was performing a duty which he was employed to perform.

There is, however, another question involved in this case and that is whether there was any occasion for decedent being in the barn on the evening in question. As reflecting upon this evidence has been introduced tending to show that the decedent had been drinking during the day on which he was injured, but this evidence in no way establishes that White was intoxicated and it is clear that his condition was not such as to warrant the foreman or general manager in ordering him to discontinue work — in fact he was permitted to continue the performance of his duties without criticism or comment. Hence, the only question is whether he went to the barn for purposes of his own or to do work for his employer. Matters of this kind are largely inferential, but under the evidence in this case we think that there is sufficient evidence to justify the inference that the decedent went to the barn as an incident to his employment or rather to be about his employer's business. There is nothing to show that the barn was an inviting or attractive structure or was in any way designed for the purpose of affording amusement or pleasure to those whom might congregate there. There is

nothing to show that it was in any way tempting or alluring and no motive for the presence of the decedent at that place has been presented except that incident to his employment. If one were to draw an inference to the contrary he would be compelled to arrive at it by speculation, guess or conjecture which is not proper, while on the contrary the other presumption, viz.: — that he went there in the line of his duties, can be arrived at without any speculation or conjecture and is the more reasonable explanation of his presence. That it is proper to place this last construction upon his conduct is apparent from an examination of the following cases: —

In *Evans & Co. vs. Astley,* 4 B. W. C. C., 319, it developed that a train of trucks pushed by an engine overtook another train. The brakeman of the rear train tried to climb on the front train but slipped and was killed. There was no direct evidence as to his reason for trying to board the front train, but there was evidence that he would shortly have to alight to do switching and that it was much easier to alight from a step of the car from the front train than to get down from a truck in the rear train. Lord Loreborn in announcing the opinion in the case held that the more probable conclusion is that for which the claimant contends and there is everything pointing to it, that there is evidence for a court to act upon, for courts like individuals habitually act upon the balance of probability. It was held to be most improbable that the brakeman tried to climb upon the car for his own purposes, whereas, the theory that he meant to step from one train to the other in order to more quickly and conveniently alight seemed very probable. Lord Robson in a concurring opinion alludes to the fact that if the deceased was merely getting onto the first train to waste his time in the society of the brakeman, that would have been a wrongful intention on his part and that was not to be rightfully presumed against him. When a workman is engaged in some act reasonably consistent with his employer's service it requires some definite evidence to found the inference that he was moved by a wrongful intention.

In *Rice et al. vs. Owners of Swansea Vale,* 3 B. W. C. C., 152, the chief officer of a steam vessel fell overboard in the morning when he was on duty. No one saw the accident. It was held that the county judge was justified in drawing the inference that the accident arose out of as well as in the course of his employment.

In the foregoing decision reference is made to *Mitchell vs. Coal Co.,* 9 W. C. C., 16, where a collier returned home in the morning with a crushed finger. The court held that it was far more probable and likely that the injury arose from his work than that it happened on his way home and therefore it was decided that the accident arose in the course and out of the employment.

McKinnon vs. Miller, 2 B. W. C. C., 64.

Numerous other cases might be cited showing the propriety of drawing inference where an injury might have occurred in several different ways, it being proper and legal to arrive at the conclusion most probable from the evidence adduced in connection with which it is correct to take into consideration matters of common sense and common knowledge.

Our conclusion being that the decedent was killed in the course of his employment, compensation is awarded in the sum of $6.00 per week for the period of 312 weeks; funeral expenses in the sum of $107.00; and medical expenses in the amount of $2.00 are also awarded. The whole of the award is made payable to Lucinda White, she being wholly dependent, while the son, Orley, being past sixteen years of age, is presumably not dependent, and

no satisfactory evidence has been adduced to rebut the presumption of non-dependency.

RE. CLAIM NO. 37914.

THOMAS MACK, *Claimant.*

(Decided Sept. 2, 1914.)

An employe suspended work about a minute before time to quit for lunch and proceeded to a locker on the premises of his employer. A fellow employe, who was in the locker room, rolled up a pair of overalls and, in a spirit of fun, threw them at him, striking him in the face, and injuring his eye.

HELD: That the injury was sustained while in the course of employment.

STATEMENT OF FACTS.

Thomas Mack makes application for compensation for injuries alleged to have been sustained in the course of his employment on May 18, 1914, while in the employ of The Goodyear Tire & Rubber Company, of Akron. Applicant fails definitely to state in his application what he was doing at the time of his injury, his expression in this regard being: "was walking through my dept." From the report of the attending physician, however, it appears that Mr. Mack made an oral statement that he was walking through the room where he was working when an employe threw a rag at him which struck him in the eye. The report of the examiner and that of the employer disclose that about a minute before lunch time the injured man was on his way to the toilet or locker room, when a fellow employe, who was in the locker room, rolled up a pair of overalls and, in a spirit of fun, threw at Mr. Mack, striking him in the face, the resultant injury being contusion of the eye, inflammation conjunctivitias, and what an eye specialist designates as *traumatic iriteis.*

The applicant claims that by reason of this injury he was disabled from work from May 20, 1914, until June 8, 1914, his wages being about twenty-two dollars a week for a period of about a year and a half prior to the injury at the time of which he was earning from $4.00 to $4.25 per day. The physicians' fees were as follows: Dr. M. D. Stevenson, $10.00; Dr. A. M. Millard, $1.00. While Dr. Millard states that Mr. Mack did not quit work, he only treated him at the time of the injury and Dr. Stevenson, the specialist, who gave him subsequent treatment, says that while he did not think the injury permanent yet it was impossible for the injured man to do any work while such injury lasted.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The question for solution here is whether the decedent was injured in the course of his employment under the provisions of Section 21 of the workmen's compensation act, there being no evidence that the injury was "purposely self-inflicted" and the presumption being that it was not so self-inflicted.

It seems to us that it may be conceded that Mr. Mack was, at the time of the accident, in the service of his employer, there being no break in or discontinuance thereof merely because he had ceased doing the actual work he was employed to do and was preparing to leave for lunch.

It has been held that ordinarily an employe is not out of the employment of his employer until he is off his premises, and where a workman who had finished his day's work and was changing his clothes preparatory to going home, the relation of employer and employe still exists between him and his employer. *Broderick vs. Union Depot Co.,* 56 Mich., 261; *Helmke vs. Thilmany,* 107 Wis., 216.

In *Terlecki vs. Strauss & Co.,* 89 Alt., 1023, it appears that a woman, employed in a silk manufacturery, left her machine just before noon to tell the foreman that she was not well and would not return to work in the afternoon. Not finding the foreman she went to an alley-way formed by rows of machines to dress and comb her hair. Her hair was caught in a revolving wheel and her scalp was torn almost from her head. It was held that the accident arose out of and in the course of employment.

In *Boyle vs. Fireproofing Co.,* 182 Mass., 93, it was decided that a workman who was killed while descending from the top of a building in a material hoist, after noon hour, to eat his dinner, was in the employ of the contractor when the accident happened; and in *Neice vs. Creamery & Supply Co.,* 133 N. W., 878, an employe was held to be in the service of his employer when preparing to use toilet conveniences provided by the employer. See also *Elliott vs. Rex,* 6 W. C. C., 27.

It must be borne in mind that the Ohio Statute provides for the payment of compensation to every employe who is injured and to the dependents of such as are killed "in the course of employment". In this respect, as we have held repeatedly, it differs from the law of England and many of the states. In fact the most customary statutory requirement is that the injury must not only occur "in the course of employment", but it must also "arise out of the employment", and this establishes a very clear line of demarcation between the Ohio law and those which use the language last suggested. In fact, so vital is the difference that it is difficult to render the decisions under other laws applicable to that of this state in questions such as the one now under consideration. This has been very well pointed out in *Bryant vs. Fissell,* 86 Atl., 458, wherein the Supreme Court of New Jersey discussed the phrase "arising out of and in the course of the employment", as it appears in the New Jersey Act. The following very pertinent language is taken from the opinion:

> "For an accident to arise out of and in the course of the employment, it must result from a risk reasonably incidental to the employment. As was said by Buckley, L. J., in *Fitzgerald vs. Clark & Son,* (1908) K. B. 796, 77 L. J. K. B., 1018:
>
> > "The words 'out of' point, I think, to the origin and cause of the accident; the words 'in the course of' to the time, place and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The latter words relate to the circumstances under which an accident of that character or quality takes place. The character or quality of the accident as conveyed by the words 'out of' involves, I think, the idea that the accident is in some sense due to the employment. It must be an accident resulting from a risk reasonably incident to the employment."
>
> We conclude therefore that an accident arises in the course of the employment if it occurs while the employe is doing what a man so

employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time."

The last sentence of the foregoing quotation is practically the language of Lord Loreburn in *Moore vs. Manchester Liners,* 79 L. J., K. B., 1175. See also 8 Thompson on Negligence, Section 4575-C. *Re. Employer's Assurance Co.,* 102 N. E., 697, (Mass.) is authority for the following statement:

"It is sufficient to say that an injury is received in the course of the employment when it comes while the workman is doing the duties which he is employed to perform. It arises out of the employment when there is apparent to the rational mind, upon consideration of all of the circumstances, a causal connection between the conditions under which the work is required to be performed and the resultant injury."

For cases illustrative of this principle see 1 Bradbury's Workmen's Compensation law, 2nd Edition, page 508, and *Biddinger vs. The Champion Iron Co.,* decided by this Commission on July 1, 1914.

In the case before this Commission it must be assumed that the employer provided the toilet and locker for its employes and consequently we must assume that the relation of master and servant did not cease when these facilities provided by the master were being properly used by the servant. This is especially true when it is remembered that Mack had not yet left his employer's premises but was only preparing to leave for lunch at the time he was injured. This being true it would seem that the workman was doing something which he was permitted to do by his employer and which was not so extrinsic to the proper performance of his duty, so foreign to his employment, as to justify the imputation that he had left his employment. This brings the case within the purview of the language of *Bryant vs. Fissell, supra,* as well as that of Lord Loreburn in *Moore vs. Manchester Liners.* It cannot be justly or fairly contended that Mr. Mack was not doing what a man employed as he was might reasonably do at the time of his injury, or that he might not reasonably be at the place where he received his hurt. If the Ohio law had contained the language "arising out of the employment" a different situation might perhaps arise, but the very elimination of this language by the framers of the Ohio law must have indicated an intent to give the workmen's compensation act of this state a broader interpretation than that placed on the statutes of other states containing the more restricted language. That this was done advertently is apparent from an examination of and comparison of the Ohio law and those of other states and countries. When one analyzes our statute he will readily see that some of its features are taken from the laws of other states as well as from England, thus showing that the lawmakers had in mind these statutes. Having had such statutes before them and having omitted therefrom certain salient language one is forced to the conclusion that it was the intent and purpose of those who framed the Ohio law to give it a different effect from that of England and the other states. To place any other construction than the one here suggested upon the phrase "in the course of employment" would be practically to read into the act the words "arising out of" which would be doing violence we feel sure to the legislative intent.

From the foregoing it follows that there is no limitation or restriction as to the cause of the injury, (except that it must not be purposely self-inflicted) which will prevent the employe from being entitled to compensa-

tion when he is injured at a time when he is doing that which he may reasonably do and at a place where he may reasonably do it according to the terms of his employment and while in the service of his employer.

Having held that claimant was in the service of his employer at the time of his injury, and there being no question as to the nature of the injury, it must follow that he is entitled to compensation because he was hurt in the course of employment.

Compensation is awarded for one and four-sevenths weeks disability, amounting to $18.86, and an award for medical services is also made in the sum of $11.00.

RE. CLAIM NO. 39943.

HENRY VERKAMP, *Claimant.*

(September 3, 1914.)

An employe was sent by his employer to deliver a package of hardware, and after having delivered the same and while returning to his place of employment he stopped to render assistance to a horse which had been overcome by heat and while assisting the horse, it fell upon him and broke his leg.

HELD: That the injury was not sustained in the course of employment.

STATEMENT OF FACTS.

On the 9th day of June, 1914, Henry J. Verkamp was an employe of one George Hartke, of 2129 Central Avenue, Cincinnati, Ohio.

On that day Verkamp was instructed to deliver a package of hardware to a customer in Winton Place, which is in the city of Cincinnati. To reach the part of Winton Place to which he desired to go, he boarded what is known as a "jerkey", it being a short car line which runs from Spring Grove Avenue to the north gate of Spring Grove Cemetery. It seems that cars ran on this particular track only about every thirty minutes and the cars did not run into the city proper. After Verkamp had delivered his package, the "jerkey" was not on hand and he started to walk back three or four blocks, so as to get the regular car line to the city. While walking back he noticed a horse hitched to a milk wagon was suffering from heat. He stopped to see what was the matter and what occurred is thus described by Verkamp himself: "I was on an errand for my employer, and in the course of my duties of passing along to deliver the article which my employer sent me to deliver, I was called in to assist and do a humane act of saving a horse that had been overheated. During the performance of such act the horse reeled and fell on me."

The horse was not owned by the employer or used by him in his business.

Claimant was earning $12.50 per week at the time of his injury and at the time of the filing of his application for compensation on July 27, 1914, was still in the hospital.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The important question to be determined in this claim is whether the claimant was in the course of his employment at the time of his injury.

The claimant was in the course of his employment while on his way to

deliver the package of hardware which his employer directed him to deliver to a customer and of course was also in the course of his employment during the time necessarily required for him to return to his place of employment. The act of the claimant in rendering assistance to a horse which had been overcome by heat was a most commendable act, but the question to be determined by us is whether by stopping while on his way back to his place of employment to perform this most humane act, he deviated from his course of employment.

The act of the claimant which resulted in his injury was neither authorized nor forbidden by his employer, but it had no connection whatever with the employer's business or with the duties of the claimant. Many injuries occur to employes while performing unauthorized acts or even while violating specific orders of the employer, which are compensable because the act done bears some relation to the work the employe was employed to perform. Many such acts amount at most to negligence, and there is a clear distinction, we think, between the doing of a careless or foolish act which bears some relation to the work that is being done by the employe and the doing of something which bears no relation whatever to the business of the employer or to the work which the injured employe was employed to do.

It is true that we have held in numerous claims that it is not necessary for an injury to arise "out of" the employment. That is, it is not necessary for the injury to be caused by any hazard connected with the employment itself, but the claimant, in order to be entitled to compensation, must be injured while "in the course of employment".

Had the horse which the claimant sought to assist belonged to the employer, the act which claimant did would have been in furtherance of his employer's interests, and although his employment had nothing to do with the care of horses, we feel that he would, under such circumstances, be entitled to compensation, as stopping and turning aside on his return to his place of employment to perform an act presumably for the benefit of his employer ought not to be considered as a departure from his line of duty or scope of employment.

In the case of *Rees vs. Thomas, 1 W. C. C., 9,* it was held by the Court of Appeals of England, under the provisions of the Workmen's Compensation Act of 1897, that where an employe who was a miner in the employment of a colliery company and belonged to the class called firemen, his duty being to examine the mine from time to time and make reports, was injured while attempting to stop his employer's runaway horse, that the injury arose out of and in the course of employment, although the employe's work was wholly unconnected with horses. It appears that on the day of the employe's injury he had examined the mine and found it in a proper state, and having made a report in writing, it was his duty to take his report to an office which was about half a mile distant from the mine. Some trucks loaded with ashes were just about to start, drawn by a horse, along a tramway in the direction of the office, and the employe in breach of one of the rules of his employer got up on one of the trucks, in order to have a ride. While the trucks were proceeding the horse took fright at something and bolted. The employe jumped off the truck and tried to stop the horse, and in so doing, was run over and killed. The county judge found, as matter of fact, that the deceased, though acting in breach of a rule, had not been guilty of "serious and wilful misconduct", and that the fact that a rule of the employer was being broken at the time of the injury did not of itself take the employe out of the course of his employment. It was sought to reverse the decision of the County Court on the ground that the injury was not sustained in the

course of employment, but the Court of Appeals held that what the employe did was done upon an emergency in the interest of his employer and that the injury occurred in the course of employment.

In the case of *Yates vs. South Kirby, Featherstone and Hemsworth, Collieries,* 3 B. W. C. C., 418, the Court of Appeals of England held that a coal miner who ceased the work he was employed to do to assist in removing a fellow workman from a mine, who had been knocked down and so shockingly injured by a fall of coal that he died almost immediately, was in the course of his employment while rendering assistance to his fellow workman and that an injury sustained by him while so removing his fellow workman from the mine was incurred in the course of employment, Farrell, L. J., saying: "It is conceded, and rightly conceded, that it was part of the workman's duty to go to the assistance of the fellow workman for the purpose of helping him. Therefore, there is no question that the events arose out of and in the course of his employment."

We think the claim now under consideration can be clearly distinguished from the cases above cited. Were the facts in this claim the same or similar to the facts in those cases, we would have no hesitancy in holding that the claimant was in the course of his employment at the time of sustaining his injury.

We regret that we must arrive at the conclusion that in performing the most humane and commendable act which resulted in his injury, the claimant had departed from the scope of his employment and therefore was not injured while in the course of his employment and compensation is denied on that ground.

RE. CLAIM NO. 19331.

MARGARET M. CLARK, ET AL., *Claimants.*

(September 3, 1914.)

An employe while engaged in performing work he was employed to perform was assaulted and killed by a fellow employe.

HELD: That the injury resulting in death was sustained "in the course of employment," within the meaning of Sections 21 and 25 of the compensation act.

STATEMENT OF FACTS.

Walter B. Clark was an employe of The Champion Coated Paper Company, of Hamilton, Ohio, a contributor to the state insurance fund, and on January 23, 1914, was stabbed by a fellow employe, and died on January 25, 1914, as a result of such injury, leaving surviving him the claimant, Margaret M. Clark, a daughter, aged one year and one month, with whom he was living and supporting. It also seems that there is another child *en ventre sa mere.*

It is very difficult to gather a correct account of the happening of this accident from the evidence produced, but it is clear that on January 23, 1914, the decedent was stabbed over and behind the left ear by a fellow workman named Bond. It seems apparent that these two men had formerly been friendly but on the date last named they got into a quarrel about a truck shortly after six o'clock in the evening. Clark finally obtained possession of the truck and took it to his place of work in the establishment. Bond followed him and what then ensued has been described in this way by Rolla Cress, one of the witnesses testifying before the coroner:

"Well, the first I saw of it, there was scuffling over the truck, the first I saw of it, you know, and Clark he went around the machine to come across the rolls, and I didn't pay no attention to it, you know, and so I came back in front of the calender and looked around and they was fighting over the box. Looked like they was fighting with their fists, and Clark got some kind of a club in his hand, and I didn't pay no attention to what kind of a club it was. Looked like a calender to me. It didn't know whether it was, and I looked for the boss, and they moved then about ten feet from where they was at, and while they moved, why, I looked again, it looked like Clark was down on his knees, and Bond was over him, and his brother grabbed a clamp and started across the floor, and hit Bond, and throwed it at him, and his brother came up. I didn't think anything like that, and his brother came and staggered against the post, and I looked up and saw the knife, saw it just before he seen it, I guess, and jerked the knife and throwed it down, his brother did."

This witness also testified that he did not know who started the argument but that he did see Clark with a club, piece of pipe, or something of that kind in his hand. The testimony of the witness is not very clear as will be apparent from the foregoing quotation, but a salient feature of his testimony is embodied in the following question and answer:

Q. "Did you see this man Clark strike a blow and hit this man Bond?

A. No, I didn't. He was striking him, looked like, to keep him off I thought."

The witness also admits that he was not looking at the time but when he first saw them they were boxing and Clark tried to get a club. When he looked again Clark was down and Bond was over him.

This testimony is corroborated by Paul Fetzer, another witness, who testified that Bond struck Clark after which Clark picked up a cone, whereupon Bond began to fight with him. Clark then dropped the cone and picked up a bar, after which he was cut by Bond.

This witness also emphasizes the theory that Bond followed Clark, his language in this respect being as follows:

"I didn't see the first part of it over the truck. It was started on thirteen calender cone, and I didn't see it until Bond came over and struck Clark when he was over the truck."

This witness described the weapon with which the stabbing was done as a rusty deerfoot knife which, when you opened it, had to be clamped in order to hold it open, which clamp had to be removed when the knife was shut.

Henry Clark, a brother of the decedent, who, of course, may be said to be an interested witness, thus describes the accident:

"I didn't exactly hear it, but I saw some of it. It wasn't much of an argument, but he tried to take a truck away from my brother, and my brother wouldn't let him have it, and so he followed him around, and while he was taking off a load, had his back to him, and come up and hit him in the neck and cut him. Cut him before I could get to him, and I was just about three feet away from him, — three or four feet.

Q. "Was your brother fighting with him?

A. "No, he started to try to, but he tried to get away from him, but he kept running after him, and followed him up, and he couldn't get past, and he cut him, and when he saw he couldn't get away he stooped to pick up something and got in his hand, but he cut him before he got a chance to use it.

Q. "Did you see your brother strike this man Bond?

A. "No, he didn't get no chance to strike him. Whatever he had in his hand dropped out, and dropped it on the floor and he turned around and looked at me and I saw the knife in his head. He didn't get no chance to strike him. He was sitting down something like this (indicating) when it happened."

Mr. Althoff, traveling inspector, states that Mr. Clark, when he sustained the injury at the hands of Bond, was working at a calender machine, his regular employment. He was in a stooping position, taking a roll of paper from the truck, when he was attacked from behind. Bond caught Clark by the back of the neck and struck him with his fist. Clark disengaged himself and then Bond drew from his pocket a large deerfoot knife striking Clark behind the ear. Prior to this attack the two persons had some words regarding a truck which was in Clark's possession. The inspector is also of the opinion that the injury did not arise out of a fight as Clark did nothing more than make an effort to defend himself.

From the foregoing it is very difficult to arrive at a conclusion as to exactly how this injury happened, as all of the completely disinterested witnesses do not seem to have seen the whole occurrence; and as the person who stabbed the decedent has disappeared his version of the affair cannot be learned. It is very apparent, however, that the argument, in which the death of Clark originated, had taken place some distance from Clark's place of employment and had absolutely ceased at least as far as Clark was concerned, before the stabbing took place. It will be observed that Clark moved the truck over which the dispute arose to his work place and that he was followed by Bond, who was evidently looking for trouble. While it is true that there is evidence tending to show that Clark picked up a cone, a club or bar, evidence to that effect is explained by the statement of two witnesses that this was apparently done for the purpose of defending himself and of keeping Bond away. The knife Bond used was one which required some preparation in order to keep it open, and while there is no evidence tending to show that Bond had opened it prior to Clark picking up the cone, the inference seems to be that he must have done so as those who saw the injury would evidently have noticed him opening the knife had he done so in order to defend himself from the attack of Clark.

By the Commission: (Opinion by Yaple, Chairman, Hammond and Duffy, Commissioners, concur.)

After a careful examination of all of the evidence, it seems that the proper conclusion at which to arrive is that the decedent was engaged at work at the time he was attacked by Bond and that he did not discontinue such work to engage in a fight with his slayer.

We have gone into the evidence at length because we think that it is very important to find the exact facts surrounding an injury of this character

before the rules of law should be applied thereto as a slight change in circumstances will result in a variety of holdings. Consequently this opinion is not written on the assumption that the two employes had left their employment for the purpose of settling by fisticuffs or weapons a quarrel between themselves; nor is it written on the assumption that Clark had been attacked by Bond and in defending himself got into a fight which resulted in his death, because if he entered into the quarrel with any degree of willingness, or if he used a weapon or his fists to defend himself when it was unnecesary so to do he would not have met with an injury in the course of his employment. In order that there may be a recovery in this case it must be clear that Clark was performing duties incident to his employment at the time of the attack upon him.

Assuming that Mr. Clark was engaged in work at the time he was stabbed, the question arises whether or not he was injured in the course of his employment within the purview of the workmen's compensation act. It has been heretofore held by this Commission that one is in the course of his employment when he is doing the duties which he was engaged to perform or when he is doing what one so employed may reasonably do as an incident of his employment at a time during which he is employed and at a place where he may reasonably be. See *Re. No. 37914, Thomas Mack, Claimant,* decided by this Commission on September 2, 1914, and cases therein cited.

The Ohio act differs from that of almost all states and countries in that it provides for compensation to employes who are injured and the dependents of such as are killed *"in the course of employment"*, (See Sections 21 and 25) whereas, the language of other compensation acts requires a causal between the employment and the injury. (See *Re. Claim No. 37914, Thomas Mack, Claimant.*)

In addition to this the Ohio law is not even limited to injuries arising from *accidents* occurring in the course of employment. The italicized word being omitted although it is usually found in acts of this character. This indicates the broad and humanitarian purpose of the act and shows plainly that it is intended to be inclusive rather than exclusive. Being remedial in its nature it should be construed in an equitable and liberal rather than in a strictly technical way.

Many authorities may be cited holding that injuries similar to the one in question do not justify an award of compensation, but it will be found upon an analysis of these decisions that they are founded upon the fact that the injuries did not arise *"out of"* the employment and therefore that they did not come within the purview of those statutes under which the cases were decided. This is especially true of the English decisions, to the latest of which we shall hereafter refer. While the Massachusetts statute only allows compensation when the injuries arise "out of and in the course of the employment", nevertheless, the Supreme Judicial Court of that state has given the law a liberal interpretation and has held in the case of *In Re. Liability Assurance Assn.,* 102 N. E., 979, that recovery might be had for injuries resulting from assault by a drunken fellow-servant. This, however, is based upon the theory that the employer's superintendent knew that the fellow-servant was in the habit of drinking to intoxication and when intoxicated was quarrelsome and dangerous and that it was unsafe to permit him to work with his fellow employes; such superintendent also knowingly permitted the said fellow-servant to continue at work on the day of the accident in an intoxicated condition. Thus it was plain that the injury was due to the act of one whose quarrelsome disposition and intoxicated condition were known to the foreman, a natural result of which was the attack by the "choleric

drunkard" upon his co-worker. In this way a causal of connection was established between the injury and the employment.

There did not seem to be any question raised in that case as to the injury occurring in the course of employment and all of the reasoning of the court was to bring the accident within the phrase "arising *out of* the employment".

There is some evidence in the record here indicating that Bond had fled from Kentucky to escape prosecution for the crime of arson, but this fact is not shown to have been brought to the attention of The Champion Coated Paper Company or any of its employes authorized to hire or discharge workmen, so that it is unnecessary here to pass upon the question of whether that would have any bearing upon this case.

A late and important English decision is that of *Mitchinson vs. Day Bros.*, 1 K. B., 603 (1913). It there appeared that the decedent was a carter, and as he was driven along a highway a drunken man stepped near the horse's head. The decedent fearing that the animal would injure him warned him to keep out of the way, whereupon the intoxicated person struck the decedent two blows upon the head killing him. Claim for compensation was made and denied by the court upon the theory that the injury was not incident to and did not arise out of the decedent's employment. In the statement of facts it is said: — "It was not disputed that it arose 'in the course of' his employment." It was contended that where the injury was felonious there could be no recovery as it did not arise out of an accident, but this view the court refused to follow. Cozens-Hardy, M. R., alludes to the distinction between "in the course of" and "arising out of" the employment, and another member of the court says that it is conceded that the injury occurred "in the course of" the employment. Now if the injury to the carter in the case just referred to occurred in the course of employment, it would seem that there can be no question that the injury to Clark also happened in the course of his employment provided our finding that he was stabbed while at work is correct.

One of the few statutes containing the broad language of that of Ohio is the federal law granting to certain employes of the United States the right to receive from it compensation for injuries sustained in the course of their employment. This law authorizes payment to those injured "in the course of" their employment and does not require that the injury arise "out of" the employment, but by virtue of a proviso the operation of the act is limited in that no compensation shall be paid under that act where the injury is due to the negligence or misconduct of the employe injured.

The Solicitor of the Department of Commerce and Labor of the United States had occasion to consider this question (*In Re. Claim of Cornelius Flemings,* Opinion of Solicitor of Dep't of Commerce and Labor, 187). An employe, without negligence or misconduct on his part, was struck by his foreman, in a fit of anger, and had his arm broken. The holding of the Solicitor was that he was injured in the course of his employment. In this opinion reference is had to the case of Elmer E. Bailey, which is to be found on page 232 of the foregoing opinions. In that matter a workman, while attending to his duties, was bitten by a mad dog. It was held that he was injured in the course of his employment. In this latter opinion the Solicitor exhaustively discusses the English decisions and clearly shows the distinction between injuries arising "out of" and those occurring "in the course of" the employment. He says:

> "The injury for which compensation is here provided is not limited to injury by accident, nor to injuries arising out of the employment, as in the case of the British statute. It is only necessary that the injury be received in the course of the employment by the United States."

Our attention has been called to the case of *Brown vs. The Jeffrey Mfg. Co.*, decided by Judge Bigger of the Franklin County Court of Common Pleas on March 11, 1913, and reported in 15 N. P. (N. S.) 45, in which Section 21-1 of the compensation act of 1911 is construed, the court holding that under the provisions of that section, which was the section providing for the removal of the common law defenses in civil actions against employers who had not elected to become subscribers to the state insurance fund, an employer was not liable for an injury to an employe caused by a mischievous act of a fellow employe not in the course of his employment. In this case the plaintiff was injured on September 26, 1912. While in the course of his employment and under the direction of a foreman he was seated on a stool operating a drill press. He leaned forward in the course of his employment and under the direction of his foreman to turn on a small water valve connected with the drill press. His duties required him so to do many times through a working day. While leaning forward John Blakesly, an employe of the defendant, wrongfully pulled the stool on which plaintiff was sitting from under him causing him to fall to the floor and while so falling plaintiff struck his right elbow on the edge of a steel bucket filled with iron bolts, the blow causing a cut and bruise and leaving his right arm stiff and weak. Judge Bigger, in the course of his opinion, says:

> "In my opinion, the language 'in the course of employment' is to be applied as well to the person injured as to the one committing the injury. In construing an act, all of its different provisions are to be construed together. That this language applies as well to the person committing the injury as to the one injured seems to be very strongly reinforced by a consideration of the provisions of Section 21-2 of the act which provides that in the case of injury arising from the wilful act of an employer or his officers, or agents to any employe in the course of employment and the employer has paid into the state insurance fund the premium provided for by the act, that it is optional for the injured employe to take under the provisions of the act or to institute a proceeding in the courts to recover his damage. In such case this act is not applicable and it is not to be supposed that the Legislature was ignorant of the fact that for wanton and wilful torts of an agent the master is not liable except when the tort is committed within the course of his employment. The fact that the Legislature therefore provided that for the wilful torts of an agent the injured employe might either take under the statute or sue to recover his damages at law shows that the Legislature meant that it was only for wilful torts committeed within the course of the employment that it was legislating about and not for a class of cases where there was no liability of law and for which injuries the injured employe could not maintain an action at law against the employer."

This case has since been affirmed by the Court of Appeals and as the dicision of that court is not reported we assume that the affirmance was upon the reasoning of Judge Bigger above quoted.

Section 21-1 of the act of 1911 has become section 26 of the act of 1913 and in so far as the question involved in this case is concerned the two sections are identical. Section 21-2 referred to by Judge Bigger, in the course of his opinion, has become Section 29 of the act of 1913 and has since been materially amended at the extraordinary session of the General Assembly in 1914, but in so far as the question here presented is concerned the changes that have taken place in that section are not material.

It is the duty of this Commission to follow the construction placed by the courts, especially of the court of last resort, upon the law in so far as their decisions relate to the jurisdiction of the Commission, but the question decided by Judge Bigger was one raised in a civil action brought by the injured employe against his employer under Section 21-1 of the act of 1911 while the question we have to decide in this claim is as to the proper construction to be given Section 21 of the act of 1913 which specifies under what circumstances the right to compensation accrues, and Section 25 thereof which authorizes the Commission to pay money out of the state insurance fund to employes entitled thereto. It is true that the wording of Section 21-1 of the act of 1911 and of sections 21 and 25 of the act of 1913 is very similar, the former giving the injured employe the right to recover from his employer for "personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or *employes*," while Section 21 of the act of 1913 provides that "every employe * * * who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred provided the same was not purposely self-inflicted" shall be entitled to compensation. Section 25 directs us to pay compensation out of the state insurance fund to such injured employes and the dependents of such as are killed. But, under the provisions of Section 21-1 of the act of 1911 and Section 26 of the act of 1913, which, as above noted, apply only to civil actions against employers who have failed to become contributors to the state insurance fund, it is necessary in order that the injured employe may have a cause of action that the injury be occasioned by the *wrongful act, neglect or default* of the employer, his officer, agent or *employe*, while under the provisions of Sections 21 and 25 of the act of 1913 it is not necessary that the injured employe be injured by the wrongful act, neglect or default of his employer or any one else in order to entitle him to compensation. It is sufficient if he is injured while *"in the course of employment"* regardless of whether the injury was occasioned by the default or negligence of his employer or that of a fellow workman or by his own negligence provided he did not purposely self-inflict his injury. Should we apply Judge Bigger's construction of Section 21-1 of the act of 1911 to Sections 21 and 25 of the act of 1913 we think we would be reading something into the act which was not expressed by the Legislature and which by no reasonable rule of construction can be implied.

We have heretofore given the question herein involved some consideration in *Re. Claim No. 18133, Chas. F. Roll, Claimant.* In the claim a foreman discharged an employe and while he was obtaining some of the personal effects of the discharged employe for the purpose of giving them to him he was shot by the aforesaid discharged employe and we held that under such circumstances he was injured in the course of his employment and entitled to compensation. In that claim there was no question whatever as to the manner in which the injury was sustained and while in the claim under consideration some doubt exists, the same question is involved in both, viz.:— whether an employe who is injured by the malicious act of a fellow employe

while the person injured is performing a service which he was employed to perform is injured in the course of his employment. We think an employe injured under such circumstances is injured "in the course of employment" and that he is entitled to compensation.

The earnings of the deceased from August 31, 1913, to January 23, 1914, were $244.45, or an average weekly wage of $13.22. Compensation will be awarded to the widow and children on this basis, viz.: — $8.81 per week for the full period of 312 weeks, the whole of which shall be paid to Margaret M. Clark for the equal benefit of herself and minor children; an award of $127.00 for undertaker's services, and $81.45 for medical services is also made.

RE. CLAIM NO. 36817.

EARL W. SHROEB, *Claimant.*

(Decided October 2, 1914.)

An employe who, after suspending work for the day, and while preparing to leave his employer's premises, negligently walked over a pile of spindles to the place where his coat and hat were hanging for the purpose of obtaining those articles of apparel, and was injured by one of the spindles turning and spraining his ankle, was injured in the course of his employment and it entitled to compensation.

STATEMENT OF FACTS.

The claimant, Earl W. Shroeb, was on the 19th day of May, an employe of The National Machinery Company of Tiffin, Ohio. On that date he was injured at the plant of the company in the city of Tiffin, Ohio, as the result of which he ceased work on that date and was incapacitated until June 22, 1914. His weekly wage at the time of his injury was $7.00. Upon his return on June 22, 1914, he received the same wages as before his injury.

Claimant states in his application that he was injured while "running to get my coat and hat after the whistle had blown and stepped on some splindles", the injury consisting of a sprained ankle.

The secretary of The National Machinery Company has executed the employer's certificate attached to the application, but in a letter dated June 23, 1914, says: "Referring to the application of Earl W. Shroeb, attached, we certainly feel that the allowance of such a claim would be a mistake on the part of the Commission. This accident was caused by the fact that when the whistle blew at quitting time, Mr. Shroeb was in such a hurry to get out of the plant that in place of walking down the regular aisle ways, he 'cut corners' by stepping on top of some cold rolled spindles piled upon the floor, and when these spindles rolled from under him he fell and sprained his ankle."

From a special investigation and report made by Special Deputy S. D. Burford, dated September 8, 1914, it appears that Shroeb was an apprentice machinist and was working on a lathe; that the employer had a regular place for the hanging of coats and hats; and, that it was at the time arranging to install steel lockers for each man, but that at the time the injury occurred, all the men did not take advantage of the place provided by the employer for hanging their coats and hats, but a number of them, one of which was claimant, continued to hang their clothing at places more convenient to their work. It does not appear that the employer had forbidden claimant to hang his coat and hat at the place at which it appears it was kept by him. Nor does it appear why, since the employer provided a place in which the employes

could hang their coats and hats, a rule requiring them to do so was not adopted and enforced.

The fact of the claimant's injury is not disputed.

(By the Commission: Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

We have taken considerable time in considering this claim, not because of the amount involved but because it involves a principle with which we will be required to deal frequently.

We have held a number of times that an employe is injured in the course of his employment when he is doing what he might reasonably do within the time when he is employed and at a place where he may reasonably be; and, that an employe may be in the course of his employment while going from work when he is on his employer's premises in the immediate vicinity of his labor, or when he is preparing to leave the establishment where he is employed.

We have also held that while an employe is engaged in the work he was employed to do and is injured on account of the violation of a rule of his employer, that he nevertheless is entitled to compensation, the violation of the rule being, at the most, negligence, but we have not yet gone so far as to hold that after an employe has finished his work and is leaving his employer's premises, he is entitled to compensation when injured in attempting to leave the premises by an unsafe route or by the violation of a rule of his employer requiring him to make use of a specified exit in leaving the premises.

The contention made by the employer in this case is that the claimant was in such a hurry to get out of the plant, that instead of walking down the regular aisle way, he "cut corners" and by stepping on top of cold rolled spindles piled on the floor which rolled from under him, he fell and sprained his ankle; and, that we should apply the rule that deprives the employe of compensation because he adopted an unsafe method of leaving the factory, when the employer had provided a safe method of exit.

The question here presented is largely one of fact, that is, whether the the facts justify the application of such a rule, as we do not doubt the justice and reasonableness of such rule in cases where the facts warrant its application, but the facts must be extremely strong to warrant the imputation that the employe was not in the course of his employment when injured in leaving his employer's establishment.

In *Thompson vs. Coal Co., 4 B. W. C. C., 406,* a workman was held not to be in the course of his employment when in order to relieve a call of nature he went into a space beneath an engine instead of going to the nearest water closet which had been provided by his employer. The court based its decision on the fact that the man rashly and foolishly went into the place in which he was injured.

In another case a collier was going in by way of a short cut which led across a siding on the premises of his employer. This route was often used but there were two other exits provided. The employe was knocked down by a train and injured. It was held that the accident did not arise in the course of employment. *Haley vs. Collieries, 44 Sc. L. R., 193.*

In *Hendry vs. United Collieries, 3 B. W. C. C., 567,* a miner was making his way home and instead of taking the exit provided by the mine owners crossed a gangway onto a waste heap down which he proceeded by a steep

and rough path. He slipped and fell and was fatally injured. It was held he was not in the course of his employment. The court thought where there was a perfectly proper and recognized road out of the premises, it was impossible to say that a man was in the course of his employment if he neglected that road and went out by some other means such as the one used by the decedent. It will be observed in this case that the path used could not be called a recognized means of exit because there was no evidence that its use was brought to the knowledge of the mine owners.

On the other hand, in *McKee vs. Great Northern Ry. Co., 1 B. W. C. C., 165,* a workman on a railway leaving by a short cut habitually used by the employes, although it was forbidden, who was killed by accident on the premises of the railway company, was held to be in the course of his employment.

In *Gane vs. Colliery Co., 2 B. W. C. C., 42,* a miner who was injured in leaving his work by the usual route was held to be in the course of his employment.

In *Rayner vs. Furniture Company, 146 N. W. 665 (Michigan)* the employe was injured by coming into collision with a fellow workman while going to the time-clock to register. The Michigan Industrial Accident Board held that, as he was required to proceed from work to the time-clock, this was a duty which he was required to perform and consequently he was in the course of employment. The Supreme Court sustained the board.

In *Ewald vs. Railway Company, 70 Wis., 420,* the plaintiff used a customary path and was injured while crossing a railway track. He was held to have been in the employ of the defendant at the time of his injury.

In the claim under consideration, it does not appear to us that the facts warrant the application of the rule denying compensation to the claimant. It appears that there was only one method of egress from the building in which the claimant was employed; and, that he was not endeavoring to leave the building by a forbidden route. On the contrary, he was preparing to leave the premises by the usual route. It seems that instead of hanging his coat and hat in a place provided by the employer, he hung these articles of wearing apparel at a place nearer to his work, on a nail or peg in the wall, in order that he might have them easily accessible at quitting time, and thus be able to quickly lay hands upon them, and then leave the building by the usual route ahead of his fellow employes. It does not appear that he was directed not to do so. When he quit his work the most direct course to his coat and hat lay between two machines. In the space between them was piled a number of spindles. The claimant could have avoided these spindles by walking around the machines to the point where his coat and hat were hanging, but he did not do so. He walked over the spindles with the result hereinbefore stated. This was negligence on his part — perhaps it was also negligence on the part of the employer to have the spindles piled so there would not be a free passage way between the machines. But in either event, the fact of negligence on the part of either or both is not controlling.

When we consider that an employe is in the course of his employment while leaving his employer's place of business, if he does so in the usual customary way, and that when injured, he is entitled to compensation unless the injury is purposely self-inflicted, we feel that the circumstances under which claimant's injury happened were such as to entitle him to compensation.

Compensation is awarded for three and five-sevenths weeks at $5.00 per week. A medical bill of $7.50 is ordered paid to Dr. Proctor Benner, who rendered medical service to the claimant.

IN RE. CLAIM NO. 46296.

JULIA A. WATKINS, *Claimant.*

(Decided October 2, 1914.)

The hours of emploment of a section foreman on a railroad ended at 5 o'clock p. m. on Saturday evening and he was not required to be on duty until the following Monday at 6 a. m. On Sunday, at 11:30 a. m., while walking across a trestle of said road, he fell therefrom to the ground below and was fatally injured. The regular duties of the foreman related to track work only, a separate gang of workmen having charge of the repair of bridges and trestles, and it did not appear that the foreman who met his death by falling from the trestle had been ordered to perform any duty in connection with the trestle by any one having authority over him; nor did it appear that circumstances were such as to justify the foreman's voluntarily going on duty at a time not usually required by his employer.

HELD: That the foreman did not lose his life in the course of his employment and his dependents are, therefore, not entitled to compensation.

STATEMENT OF FACTS.

Shasteen Watkins was on the 19th day of June, 1914, an employe of The Ohio River and Columbus Railway Company, which operates a line of railroad between Cincinnati and Georgetown. It is wholly within the State of Ohio, and does a strictly intra-state business, and is a subscriber to the state insurance fund. On the last mentioned date, which was Sunday, Watkins fell from a trestle on said road, located near Ripley, sustaining injuries which caused his death a few hours later.

The deceased was employed as section foreman for the road, and his duties were with the track only, as the bridge work was done by an entirely different force of men, and he was off duty from Saturday at 5 o'clock p. m. until the following Monday at 6 o'clock a. m.

There was no eye-witness to the injury, except the fireman of the road mentioned, Rube Sidwell, who was talking to the deceased at the time he fell. Mr. Sidwell's statement is as follows: "I was firing and we were going over to the tobacco siding. Watkins was on the cap timber before we started to go on the trestle. We stopped on the trestle to get the switch opened and I looked down and said, 'Do you want to get on the train, Tobe?' I thought maybe he might want to ride. But he said, 'No', and then stooped down and I thought he was going to sit down. I looked down at the tobacco patch and then at Tobe to speak to him, and he was falling down then. Maybe he got dizzy or something. The train had not moved for about five minutes. I don't know what he was doing on the trestle."

H. R. Taylor, the general agent at Ripley, states that "Watkins was not in the course of his employment at the time he met with the accident, nor had he been on duty at all on that day, the same being Sunday."

Wayne L. Buckley, the superintendent of the road, states: "Watkins was section foreman between Ripley and Georgetown. He came into Ripley on train No. 8, on the train that brought in the camp outfit. He left the train at the station and walked across the trestle. On the middle of the trestle he climbed out on to the cap timber and was there when the train went over the trestle, stopping on the trestle to open the switch. By my personal knowledge, Watkins had no business on the trestle. He could have crossed the trestle in the train had he so wished, as he knew that the train was going over that way to place the camp cars. Or had he wished to walk, he could have either walked on the city bridge or waited until the train had passed over. I had given him no orders. His duty was with the track

only, as the bridge work is done by another gang. He was off duty Saturday at 5 p. m."

The decedent left surviving him a widow, Julia A. Watkins, who is the claimant herein.

At the time of his death, he was earning $50.00 per month.

By the Commission: — (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The death of Shasteen Watkins and the dependency of the claimant upon him for support at the time of his death are conceded.

The question to be determined by the Commission is whether the decedent lost his life while in the course of his employment.

He was section foreman of a railroad, and we have given the matter very careful investigation because of our knowledge of the fact that while track men on a railroad, like policemen, have certain and definite hours of service, they are nevertheless liable to be called upon at any time to perform services is case of accident or emergency. We have not been furnished with a copy of the rules of the road in question governing its track men, but it is quite probable that a man so employed would be considered in the course of his employment, even though outside the hours of his usual employment, and although not directed to perform any services by a superior officer, if he discovered some defect in the track or road in the section on which he was employed and undertook to remedy it.

Thorough investigation of the facts does not disclose such a situation. The deceased was not on duty from 5 o'clock on Saturday evening until 6 o'clock on Monday morning; he had not been directed to go upon the track, nor upon the trestle from which he fell. The duties which he ordinarily performed had no relation to trestles and bridges, but simply to track work, the bridges being looked after by other employes.

We think the evidence submitted not only fails to establish that decedent was in the course of his employment at the time of his death, but that it shows clearly that he was not in the course of his employment.

Compensation is, therefore, denied.

RE. CLAIM NO. 35164.

Anna Schwenlein, *Claimant.*

(Decided October 2, 1914.)

A stenographer was feloniously shot and killed by a fellow employe while she was taking shorthand notes of dictation from her employer.

HELD: That she was killed in the course of her employment.

STATEMENT OF FACTS.

Anna Schwenlein was on the 13th day of May, 1914, an employe of I. N. Price & Company of Cincinnati, Ohio. She was a stenographer and on the above named date, while taking dictation from a member of the firm, she was shot by one Orville Thompson, a fellow employe, and died from the wounds thus inflicted. The deceased was about twenty-one years of age, unmarried, and lived with her father and mother and two brothers in the city

of Cincinnati, the application for compensation being filed by the mother who claims to have been partially dependent upon her daughter for support.

The Schwenlein family consisted of the father and mother (now the claimant), two sons and the deceased. It seems that the father failed in business some years ago and since that time has been in rather poor health and unable to work steadily, although he was employed at the time deceased was killed, his earnings amounting to $408.25 from December 30, 1913, to September 12, 1914. It appears that the mother was the family cashier and paymaster, receiving the greater portion of the wages of the father, the two sons and the deceased, and applying the same to the liquidation of the family expenses. While the Schwenlein family owned the residence in which they lived at the time of the death of deceased, it was subject to a mortgage, the amount of which does not appear. It does not appear that there was any source of income other than the earnings of the deceased, her two brothers and her father.

Deceased was earning $10.00 per week at the time of her death.

The claimant, Mrs. Anna Schwenlein, states that her daughter received her wages on Saturday evenings and that she would bring the amount of wages she received and hand it to claimant, with the statement, "Mother, now get you what you need, or use the money for what we need most." Claimant also states that she purchased the necessary clothing for her daughter and gave her money for necessary incidental expenses out of the family fund made up of the earnings of deceased, her brothers and father. Claimant also states that deceased made most of her own clothes from materials purchased and that she trimmed her own hats from materials purchased by claimant from the family fund. From investigations made by deputies of this department, it appears that the Schwenlein family is an eminently respectable German family, and that there is every reason to credit statements made by them as to their mode of living.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

Two questions are presented for determination in this claim:

First: Did the decedent lose her life while in the course of her employment, within the meaning of the Workmen's Compensation Act; and,

Second: Was the claimant partially dependent upon deceased for support at the time of her death?

If the first question is answered in the negative, it will be unnecessary to determine the second.

In *re. claim No. 18133, Charles F. Roll, claimant,* decided by this Commission on January 30, 1914, we held that a foreman who was shot while obtaining some personal effects from a locker which belonged to an employe whom he had just discharged, was injured in the course of his employment and therefore was entitled to compensation.

In *re. claim No. 19331, Margaret M. Clark, et al., claimants,* decided by the Commission on September 3, 1914, we held that an employe of The Champion Coated Paper Company, of Hamilton, who was feloniously stabbed by a fellow employe, when performing duties he was employed to perform, from the effects of which he died, was killed in the course of his employment and that his dependents were entitled to compensation.

In the first claim above mentioned, it might be said with much reason that the danger of being assaulted or shot by discharged employes is one

of the hazards necessarily belonging to the occupation of foreman, but the decision of the Commission was not based on the fact that the injury to the claimant was due to one of the hazards of this employment, but was based on the fact that the claimant was injured at the time he was engaged in the work he was employed to perform. The same is true as to the last mentioned claim, although the evidence in that claim disclosed that the murderer of Clark was a fugitive from justice, having fled the Commonwealth of Kentucky, after having committed a felony in that state, so that, had the employer known of his dangerous character, and nevertheless had employed him, it might well be said that his fellow employes were subjected to the hazard of being assaulted or killed by him, and that the death of Clark was to be attributed to a hazard of the employment. However, it did not appear in that claim that the employer had any knowledge or notice of the fact that Clark's slayer was a fugitive from justice, although it was known that he was a native of the Kentucky mountains, the inhabitants of which have a well-known disposition to shoot or stab upon slight provocation and often upon no provocation at all.

In the claim under consideration, it seems that the slayer of Miss Schwenlein was a jealous suitor, who was employed by the same employer as Miss Schwenlein, so that it can scarcely be said that the death of the deceased was caused by a hazard that reasonably could be charged to the work of a stenographer, and the clear-cut question is presented as to whether a person who is injured while performing services he is employed to perform, the injury being occasioned wholly by some outside agency, is injured in the course of employment.

Section 14 of the Compensation Act of 1913 (G. C. 1465-61) defines the terms, "employe," "workman" and "operative" as including "every person in the service of any person, firm or private corporation, including any public service corporation employing five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work for hire under the laws of the state, but not including any person whose employment is but casual, or not in the course of trade, business, profession or occupation of his employer."

Section 24 of the Act (G. C. 1465-71) provides that employers who employ less than five workmen or operatives regularly in the same business may elect to contribute to the state insurance fund and thereby protect themselves and their employes in the same manner as though they employed five or more employes.

Section 21 of the Act (G. C. 1465-68) provides: "Every employe mentioned in sub-division two of section fourteen hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1st, 1914, shall be entitled to receive * * * from the state insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses in case of death as is provided by sections 32 to 40 inclusive of this act."

The deceased was not a casual employe and there is nothing to suggest that the injury which she sustained was purposely self-inflicted, so that the sole question for us to determine is whether the injury she received was "in the course of employment." We have had occasion to consider the meaning of the words "in the course of employment" as they are employed

in the above mentioned sections in a number of claims heretofore decided by us, and we have held repeatedly that in order to be compensable, the injury need not result from an accident, nor need it grow "out of" the employment, but that it is sufficient if the injury is sustained while the employe is in the performance of services which he was employed to perform by his employer. It is true that we have not considered death from natural causes while in the course of employment, an injury sustained in the course of employment, and in claim No. 35163, where an employe was attacked by apoplexy or cerebral hemorrhage, from the effects of which he died, and where it appeared that the attack was not brought on by any extraordinary or unusual exertion on the part of the employe, we held that the death was due to natural causes and not to an injury in the course of employment. But the death of Anna Schwenlein was not due to natural causes. It was due to the malicious and felonious act of a fellow employe. That it was due to an injury cannot be questioned. The injury was sustained while the deceased was at work. We conclude that her death was caused by an injury while in the course of employment.

The second question to be determined is that of the dependency of the claimant.

Section 35 of the Compensation Act (G. C. Section 1465-82) provides in paragraph 4: "The following persons shall be presumed to be wholly dependent for support upon a deceased employe:

(a) A wife upon a husband with whom she lives at the time of his death.

(b) A child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the death of such parent.

In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employe, but no person shall be considered as dependent unless a member of the family of the deceased employe, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister."

Under the provisions of this section, had the husband of the claimant been killed in the course of his employment, the claimant would have been conclusively presumed to be wholly dependent upon him for support and we would not have been permitted to take into consideration the fact that she was being partially supported by her daughter and her two sons, so that we are now called upon to determine whether the provision above quoted is controlling in a case like the one under consideration.

The deceased was "a member of the family" and was a "lineal descendant" of claimant, within the meaning of the section above quoted, but was the claimant *partially dependent* upon her for support? Is the claim under consideration one of those cases in which the question of dependency "shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of the employe"?

In the case of *Hodgson vs. Owners of the West Stanley Colliery,* 3 B. W. C. C. 260, decided in the year 1910, a father and two sons earned money, all of which went into the family fund to maintain the three, together with the rest of the family, the mother and six younger children. The three wage earners were killed in one accident. The widow and younger children applied for compensation in respect of all the three deaths. It was held that the surviving members of the family were dependent on all

three, Loreburn, L. C., saying: "It was argued that the mother was in the eye of the law, wholly dependent upon her deceased husband and being so, could not possibly be in any degree dependent upon her two deceased sons; for that would involve a logical contradiction. This supposed doctrine of law was, to begin with, presented to your lordships as an inexorable rule. Later on Mr. Mitchell-Innis so far unbended as to admit that it might be only a rebuttable presumption. But when asked if the presumption could be rebutted by conclusive proof that it was diametrically opposed to the facts, as here, he would not admit that it could be so rebutted. How a rebuttable presumption could be better rebutted I really do not know. In this argument I am told that I am by law required to affirm something as the truth which every one knows to be entirely false. The short answer is that the law requires no such thing. There are such things as legal fictions, which have a peculiar history of their own; but this is not one of them. The mother was not in law wholly dependent upon her deceased husband. She and her family were dependent upon those who supplied them with the means of subsistence, namely, in the present case, her husband and each of her two deceased sons."

There is no provision in the British Workmen's Compensation Act of 1906, under which the foregoing decision was rendered, similar to the provision of the Ohio Act, to the effect that in the event of the death of a husband in the course of his employment, his wife with whom he was living at the time of his death shall be conclusively presumed to be wholly dependent upon him for support, and the House of Lords, the highest court in England, has held that under the provisions of that act the question of dependency is to be determined by the facts in each case, and that there is no presumption of dependency.

It is true that if claimant's husband had been killed, she would have been considered to be wholly dependent upon him for support, but that is not the case we have to decide. It has been shown to our satisfaction that, as a matter of fact, the claimant was in some degree dependent upon the deceased for support; not wholly dependent, but partially dependent. That being true, shall we, as Lord Loreburn said in the Hodgson case, construe the law so as to require us "to affirm something as the truth which every one knows to be entirely false"? It may be that the provision found in paragraph 4 of section 35 of the Compensation Act, under which a wife is presumed to be wholly dependent upon a husband with whom she lived at the time of his death, is a legal fiction, but that legal fiction was not erected in the law for the purpose of depriving a claimant of the right to receive compensation in a case not involving the death of the person upon whom claimant is conclusively presumed to be dependent. No doubt the provision in question was placed in the law in order to facilitate the payment of compensation to the wife of a killed employe, with whom she was living at the time of his death. It was no doubt inserted in the law in order that no question might be raised as to the dependency of the widow in such cases. Strength is lent to this view when we consider that no such provision was contained in the first workmen's compensation act; (See *Re. Claim No. 41, Laura M. Shaeffer, claimant,* decided by the State Liability Board of Awards under date of June 14, 1912).

The workmen's compensation act is remedial in its nature and should be liberally construed. We think that under a fair and reasonable construction of the latter part of paragraph 4 of Section 35 of the act, the claimant was partially dependent upon the deceased for support at the time of her death. The extent of such dependency is not easily determined. The de-

ceased was about twenty-one years of age at the time of her death. She was earning $10.00 per week, as a stenographer. From the evidence submitted, we have a right to assume that she might have indulged in the expectation that her earnings would increase. Section 38 of the compensation act of 1913 (G. C. 1465-85) provides: "If it is established that the injured employe was of such age and experience when injured as, that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage."

Taking all of the facts into consideration, we have decided that the claimant was partially dependent upon decedent at the time of her death and an award is made of $5.00 per week for the full period of 312 weeks. Funeral expenses are awarded in the sum of $150.00.

RE. CLAIM NO. 43959.

HARLEY L. KELLY, *Claimant.*

(October 5, 1914.)

When the proof in support of the claim is not sufficient to clearly establish the claimant's right to an award, and the claim papers are filed long after the time specified in Rules 4 and 7 of the Rules of Procedure, compensation will be denied.

STATEMENT OF FACTS.

The claimant, Harley L. Kelly, was on the 15th day of January, 1914, an employe of The Garford Company, of Elyria, Ohio. On that date, at four o'clock p. m., while he was putting an engine on block in the block test room, at The Garford Company's plant, the engine slipped off the block and in pushing it back claimant alleges that he sprained his back.

The First Notice of Injury and Preliminary Application was filed on July 11, 1914, and the supplemental application was filed on July 21, 1914.

In the supplemental application the injury is described as dislocation of the vertebra and the allegation is made that the claimant ceased work on account of the injury on January 27, 1914, and had not returned to work at the time of filing the supplemental application. The claimant in his application also sets forth the amount of his weekly wages and other necessary facts.

The first notice of injury and preliminary application names Doctors H. L. Knapp and E. F. Clausser as the attending physicians. An attending physician's report was filed on September 25, 1914, by Dr. Clausser in which he gives the date of his first treatment as June 1, 1914, and describes the injury in the following language:

> "By seemingly a sudden jerk the 5th lumbar was thrown or drawn inward thus causing spinal irritation and pressure upon both the femoral artery and sciatic nerves thus his trouble in limbs."

The Doctor describes his treatment as "the adjustment of the 5th lumbar vertebra from an anterior position to normal, followed by massage."

Dr. Knapp filed no attending physician's report but in explanation of his failure to do so gives the following explanation:

> "This party came to me several months ago and I treated him a few times for flat feet. This condition I attributed to working while standing on concrete floors at The Garford Company, but I have not any

record of injury. He stayed under my care about ten days or two weeks."

The foregoing information was given in a letter dated July 14, 1914.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

We have heretofore held that it is incumbent upon the claimant to produce evidence sufficient to satisfy the Commission of the existence of all jurisdictional facts before an award will be granted out of the state insurance fund, and we have provided by Rule 12 of our Rules of Procedure that

> "the proof in every instance shall be such as to show clearly the jurisdiction of the Commission, the right of the applicant to an award, and the amount thereof."

The rule above quoted does not imply that an injured employe is not given assistance by the Commission in the preparation of his claim for hearing, as friendly assistance is given and investigations made by the Commission in all cases in which for any reason the facts are difficult to obtain, it being the policy of the Commission to render aid in properly proving legitimate claims where the claimants themselves for any reason are unable to procure the facts or where through ignorance of the law and the rules of the Commission, otherwise meritorious claims might be denied for want of proper evidence to sustain them.

In the claim under consideration the alleged injury was sustained on January 15, 1914, and the claimant says he quit work as a result thereof on January 27, 1914. The first notice of injury and preliminary application was not filed until *July 11, 1914,* and the supplementary application, which is the final one under the rules of the department, was not filed until *July 21, 1914,* the first being filed nearly *six months* after the alleged injury and nearly *five months* after the beginning of the alleged disability.

Rules 4 and 7 of the Rules of Procedure are as follows:

> Rule 4 — "An employe who has been injured in the course of his employment shall, within one week from receiving such injury, file with the Commission a preliminary application showing the time, place and nature of his injury and the name of his employer. Employers shall keep on hand a supply of such preliminary applications and shall furnish a copy of same to each employe injured, as above indicated. Such preliminary application should be mailed to 'The Industrial Commission of Ohio, Columbus, Ohio, Department of Claims'.
>
> Upon receiving such preliminary application, the Commission forthwith will mail to the injured employe forms and blanks for his use in perfecting his claim, and notify the employer thereof. Unless such preliminary application is filed, no supplemental application for an award will be considered by the Commission."
>
> Rule 7 — "Supplemental application for awards in all cases of injury not resulting in death must be made by the party injured within three months after the injury is received. Where the applicant claims money to pay for medical and hospital services or medicines, he shall authorize the payment to be made directly to the person or persons

rendering such services, etc., in all cases where he has not already paid for the same."

The foregoing rules seem to us to be reasonable. Authority for their adoption is found in Section 8 of the workmen's compensation act of 1911 (102 O. L., 524) Section 1465-44 G. C., the same being still in full force. However, it has not been the policy of the Commission to enforce the foregoing and other rules relative to the time of filing notices, applications, etc., where it is apparent that to enforce the same would result in injustice. In fact our Rules of Procedure specifically provide that such rules shall not be literally and strictly enforced unless the facts clearly indicate that no injustice will be done, Rule 11 of our Rules of Procedure being as follows:

> "The provisions of Rules 4, 5, 7, 8, 9 and 10 will not be relaxed, unless, in the judgment of the Commission, the failure to observe their provisions was occasioned by want of knowledge of their existence, and unless their strict enforcement will result in hardship and injustice. In such instances the Commission will, upon application, extend the time for filing the application and other claim papers."

The fact that the preliminary application of the claimant was filed nearly six months after the injury should of itself suggest to the Commission the advisability of requiring full and complete proof of the injury and the resulting disability, especially when one of the attending physicians named by him has not only not filed an attending physician's report but has advised the Commission that he did not treat the claimant for an injury such as described in his application. The further fact that the other attending physician made his first visit to claimant on June 1st, *more than four months after the alleged injury*, places the claim before us in such a light that the most charitable view to take of it is that the claimant has failed to supply the Commission with convincing proof of his injury and of disability resulting therefrom.

The claim will be dismissed because proceedings were not begun within the time provided by Rules 4 and 7.

RE. CLAIM NO. 55317.

EARL PUTERBAUGH, *Claimant.*

(October 7, 1914.)

An employe employed by a brewing company to care for and drive a team of horses used in transporting a beer wagon, was injured by falling out of a door in the second story of a building in which the horses were kept while he was preparing to feed them.

HELD: That the injury was sustained in the course of employment.

STATEMENT OF FACTS.

Earl Puterbaugh, of Dayton, Ohio, was on the 27th day of June, 1914, in the employ of The Geo. Wiedemann Brewing Company, of Newport, Kentucky, which maintains a warehouse or storage plant in the city of Dayton.

Puterbaugh was on said last mentioned date the driver of a wagon used in making deliveries of beer. It was his duty, among other things, to care for the horses which he drove, which were kept in a barn maintained in connection with the company's plant. On the night preceding the morning of June 27, 1914, Puterbaugh slept in the warehouse of his employer in order

to be at his place of employment at an early hour, as he had been directed to unload a car of bottled beer early in the morning. Puterbaugh arose about two o'clock in the morning and proceeded to take care of the horses and feed them. The horses were on the ground floor of the warehouse and the feed was stored on the second floor, on which Puterbaugh slept. The proof on file shows that while endeavoring to procure feed for the horses Puterbaugh fell out of an open window or door into the alley and sustained an injury which is described as "broken left arm, stiff wrist, injured spine and numerous other bruises."

Puterbaugh was earning a weekly wage of $16.00 at the time of his injury.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The question to be determined in this case is whether the claimant was injured while in the course of his employment. Both the claimant and his employer maintain that claimant had been directed to unload a car of beer quite early in the morning and that he slept in the employer's warehouse in order that he might be near his employment and obtain an early start in unloading the beer. It further seems that claimant awoke about two o'clock in the morning and while still in a dazed condition, presumably as the result of awakening amid strange surroundings, attempted to move about the premises and unfortunately moved in the direction of a door opening from the second story of the building into an alley which door was open and through which he fell for a distance of about eighteen feet to the ground. Whether the dazed condition of the applicant was due entirely to his awakening amid strange surroundings does not appear, nor is it important that we ascertain further facts before making an award, as it clearly appears that he was a regular employe of the company and that his injury was sustained in the course of his employment.

Compensation is awarded at the rate of $10.67 per week for five weeks.

RE. CLAIM NO. 29889.

BRIDGET MCAULIFFE, *Claimant.*

(October 9, 1914.)

An employe was employed to operate a buffing machine. He was paid by the hour and was not employed for any specified length of time. He was injured within three hours after he entered upon his employment, by being struck on the left side near the region of his heart by a "buffer's chuck," which disabled him so that he had to suspend work for the day, and was unable to again resume work prior to his death, which occurred sixteen days after the injury. The deceased employe was unmarried and lived with his mother whom he supported.

HELD: 1. That the employment was not casual.

2. That the injury was the cause of his death.

3. The mother was wholly dependent upon him for support at the time of his death.

STATEMENT OF FACTS.

Daniel McAuliffe was on March 25, 1914, an employe of the John W. Brown Manufacturing Company, of Columbus, Ohio. His period of employment began at 6:30 o'clock on that morning, he not having been in the service of his employer prior to that time, and while working at a buffing machine, he received two blows on his body, between the waist line and the shoulder,

caused by flying "buffer's chucks." He made complaint as to the first injury at once and ceased working from 8:30 to 9:30 o'clock. At 9:30 o'clock he resumed work and worked until 10:30, when he received a second blow. He remained at his place of employment until about 11:30 a. m. and did not work again on that day. On the next day, March 26th, he went to work at 6:30 a. m. and worked steadily until 4 o'clock p. m., when he left the factory. On Saturday morning, March 28th, he came to the factory, drew his pay, and that was the last his employer saw of him. He died on April 10, 1914. A post-mortem was held and the examination disclosed that the man had a large heart and hardened arteries and valvular trouble and an aneurism of the ascending aorta, and that death was caused by the rupture of the aneurism.

The deceased was an unmarried man and left surviving him the claimant, his mother, who is about 67 years old. The deceased and his mother had made their home together for some years prior to his death. Prior to the time he was employed by the John W. Brown Manufacturing Company, he was employed by the Columbus Aseptic Furniture Company, and prior to his employment with the latter company, he was employed by the Hallwood Cash Register Company. After he ceased employment with the Aseptic Furniture Company, he had no regular employment, but worked at odd jobs. While with the Aseptic Furniture Company, his wages were from $15 to $20 a week. He was working at piece work when he received his injury, and the rate of compensation he was receiving would have enabled him to earn about $15 per week.

The proof on file shows conclusively that decedent maintained a home in which he and his mother lived, paid the rent, gas, grocery and other bills and gave her such amounts of money as she required from time to time.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

Three questions are presented in this claim: (1) Did the death of the decedent result from an injury sustained while in the course of his employment; and, (2) Was deceased a "casual" employe at the time of receiving his injury; and, (3) Was the claimant dependent upon deceased for support at the time of his death.

(1) Did the injury which decedent sustained on March 25, 1914, cause his death which occurred on the 10th day of the following April? This is a question which is involved in a great deal of doubt. The physical condition of the decedent was not good, as evidenced by the post-mortem. Although the proof does not show that he had been considered in bad health prior to the time of receiving his injury, his condition, as disclosed by the post-mortem, must have prevailed for some time, perhaps for a number of years. He had a large heart; hardened arteries and an aneurism of the ascending aorta, which are conditions usually caused by disease, over-indulgence in alcoholic liquors, or both, and aggravated by hard physical labor. The record does not disclose that the deceased was afflicted with any disease which might have given rise to his condition, and it is in evidence that his habits, especially in regard to drinking of alcoholic liquors, were not bad. On the contrary, it is made to appear that he was an unusually steady, sober and industrious workman, and that he only occasionally partook of alcoholic stimulants, and that his indulgence in drink was limited to a glass of beer occasionally.

The medical testimony is to the effect that death resulted from the rupture of the aneurism of the ascending aorta, and that the injury which decedent received on March 25, 1914, could not have caused the aneurism. It is admitted, however, that the walls of the aorta might have been in such a weakened condition that the blow of the "buffer's chuck" further weakened them, thus hastening the rupture which occurred on April 10th, causing his death.

Some time ago we had before us claim *No. 24574, Orlena Stith et al., claimants,* which grew out of the death of one Jonah Stith, who received an injury while in the course of his employment which he did not report and which did not cause him to suspend work. He worked for fifty-two days after receiving the injury, when he collapsed and died a day or two afterward, and the post-morten disclosed that death was caused by a rupture of an aneurism of the ascending aorta. We held that death did not result from the injury and denied compensation, and an appeal was taken to the Court of Common Pleas of Franklin County where a trial was had on September 18th, 1914, resulting in a verdict for the claimant.

In the case under consideration, we think it much more reasonable to conclude that McAuliffe died as the result of the injury sustained by him than that Stith died as the result of the injury which he received. In the Stith case there was no cessation of work, no report of the injury and no ill effects felt until the rupture of the aneurism which caused Stith to collapse. In the claim under consideration, the injury was reported at the time it happened. It was such as to cause McAuliffe to suspend his work, and although he performed some work later in the day on which he received his injury and worked all of the day following, he was unable to work any more after that time.

While the question is involved in much doubt, we think it reasonable to conclude that death resulted from the injury. By this we do not mean that the injury caused the large heart, the hardened arteries or the aneurism of the aorta, but that these conditions existed at the time the injury was received, and that the physical condition of McAuliffe and the injury were together responsible for his death. In other words, that he would not have died when he did but for his physical condition; nor would he have died when he did, though his physical condition was bad, but for the injury.

(2) Was McAuliffe a casual employe? We think not.

He was not, it is true, employed for any definite time. He could have been discharged by his employer at the end of his first day's work, or he might have been retained for an indefinite period. Neither was there any obligation on McAuliffe's part to remain in his employer's services for any particular length of time. It was his privilege to quit work when he chose, but he was working at the regular business of his employer, and nothing appears to indicate that he would not have had steady employment had his services been satisfactory and had he desired to remain in the employment of the John W. Brown Manufacturing Company. Our conclusion is that he was not a casual employe.

(3) Was the claimant, Bridget McAuliffe, the mother of the decedent, dependent upon her son for support at the time of his death? They made their home together. McAuliffe paid the rent and for the various household necessities. His mother was not a wage-earner and there does not seem to have been any other source of income besides the earnings of the decedent. Under these circumstances, we think the claimant was dependent upon her son for support at the time of his death and an award will be made accordingly for two-thirds of the average weekly wage, which we find to be $15,

so that the award will be $10 per week for the full period of 312 weeks, $1 of which is commuted into a lump sum payment of $300 to be paid at once; the remainder to be paid in bi-weekly installments of $18 each.

RE. CLAIM NO. 40081.

M. H. SUTTER, *Claimant.*

(October 14, 1914.)

An employe was injured while attempting to leave his employer's premises through a gate provided for the entrance and exit of employes, which was temporarily closed on account of an excavation immediately outside of the gate. Another means of exit had been provided for the use of employes when leaving the employer's premises. The injury consisted of a broken wrist occasioned by the employe falling into the excavation immediately outside of the gate through which he attempted to pass.

HELD: That the injury was sustained in the course of employment.

STATEMENT OF FACTS.

On June 15, 1914, the claimant, M. H. Sutter, was employed by The Mansfield Tire and Rubber Company, of Mansfield, Ohio. On that day he was injured by stepping into a hole just outside his employers' gate. It appears that the employers maintain on the north side of their general offices a gate, known as the "employes' gate." Just a few feet from this gate there is a large wagon gate. At the time of claimant's injury the employer was having some excavating done near the employes' gate and it was closed and the wagon gate was open and the employes were using the wagon gate as a means of entrance and exit. When claimant sought to leave his employers' premises he opened the employes' gate, which was closed, and stepped into a hole immediately outside thereof. The accident happened at 6:30 o'clock in the evening, it being daylight at the time.

Claimant's injury consisted of the fracture of the left wrist and he was disabled from the date of his injury until July 27, 1914, on which date he returned to his work. His weekly wage at the time of his injury was $24.00 and he had been receiving that wage for about four months.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The claimant was injured while leaving his employers' premises after he had quit work, so that the question presented is as to whether he was in the course of employment at the time of sustaining the injury.

A workman is entitled to have safe means of exit from his employer's premises provided him. In the claim under consideration, the usual means of exit, which appears to have been perfectly safe under ordinary circumstances, was closed on account of excavations being made by the employer immediately outside of the gate through which the employes usually left the employers' premises, and another gate ordinarily used by wagons and other conveyances in entering and leaving the employers' premises was being used by the employes in entering and leaving the premises. It does not appear from the proof submitted whether the claimant knew of the closing of the usual means of exit, but we do not think this is material. He was injured while leaving his employers' premises in the ordinary way—that is, the way

he had been accustomed to leaving the premises theretofore, and while he may have been guilty of negligence, we think he was in the course of his employment and that he is entitled to compensation.

Compensation is awarded for 4 6-7 weeks at $12 a week, amounting to $58.29, and an award for medical attendance, in the amount of $13.00, payable to Dr. J. L. Stevens, is also made.

RE. CLAIM NO. 52012.

MAUDE M. HUGHES, *Claimant.*

(October 15, 1914.)

1. There is no presumption that a child over sixteen years of age is dependent upon its father for support.
2. Dependency is a question of fact to be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of the person upon whom dependency is claimed, except in the instances specified in paragraph 4 of Section 35 of the compensation act.
3. A daughter sixteen years of age who lived separate and apart from her father, her mother being dead, and her father paying her board and furnishing her money for the purchase of necessary clothing, is wholly dependent upon her father for support.

STATEMENT OF FACTS.

On August 20, 1914, Charles Wesley Hughes was an employe of The Buckeye Cereal Company, of Massillon, Ohio. On that date his employer was having some repairs made over the engine room of his place of employment, the repair work being done by an independent contractor, when one of the contractor's employes dropped a wooden roller which fell, striking Mr. Hughes on the head and inflicting an injury from which he died the next day. The official death certificate states that the cause of death was "fracture of skull and hemorrhage."

The deceased left surviving him a daughter, Mrs. Myrtle Blackwood, 34 years of age, and a son, Roy C. Hughes, 22 years of age, neither of whom claim to have been either wholly or partially dependent upon him for support at the time of his death; he also left surviving him a daughter, Maude Mildred Hughes, who was born February 23, 1898, and who was therefore sixteen years of age on February 23, 1914. It appears that the deceased was a widower and that he was not maintaining a home and that the claimant was living near the city of Massillon with a farmer named Myers, and that the deceased had been contributing the sum of $2.50 per week to pay for her board and the sum of $50.00 a year for the purchase of her clothes.

The deceased was earning $12.00 per week at the time of his decease and had been earning that weekly wage for some time prior to his death.

The claimant's application was filed on September 11, 1914, at which time she was engaged in teaching school in Tuscarawas Township, Stark County, for which services she was receiving $45.00 per month.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The injury which resulted in the death of Charles W. Hughes was occasioned by the negligent act of an employe of an independent contractor who was doing some work for his employer, The Buckeye Cereal Company. We

have had occasion to consider whether an employe killed under such circumstances is killed in the course of his employment, within the meaning of the compensation act, and we held in the case of *Mary L. Biddinger, et al., vs. The Champion Iron Co.,* which was a proceeding under favor of Section 27 of the compensation act, that an employe so injured was injured in the course of his employment, so that, following our decision in that claim, we hold that Charles W. Hughes was injured while in the course of his employment. The proof on file is such as to leave no doubt that death resulted from the injury, which leaves only the question of the dependency of the claimant to be determined.

The claimant was sixteen years of age on February 23, 1914; for some years prior to her father's death she made her home with a farmer named William Myers and during the time of her residence with Myers, her father paid her board and bought her clothes, the average amount paid by him for her board amounting to $2.50 per week and the amount annually contributed for the purchase of her clothing amounted to about $50.00. During the time claimant lived with Myers she went to school during the time school was in session and assisted in doing such work as is usually done by children of her age living upon the farm.

Subsequent to decedent's death claimant was employed to teach a country school and at the time of filing her application for compensation she was so engaged and was earning $45.00 per month. It does not appear, however, that she was earning any money at the time of her father's death, or that she had ever received any money for services rendered by her, and from her age, we assume that she had never been a wage earner prior to her father's death.

The question for us to determine is whether the claimant was dependent upon her father for support at the time of his death and if so whether she is to be considered wholly of partially dependent.

The question of dependency is one which we are frequently called upon to consider and in *re. Claim No. 15155, Sarah Musselli, et al.,* claimants, decided this day, we reviewed the question at length, our conclusion being that there is no presumption as to dependency except in the specific instances mentioned in paragraph 4 of Section 35 of the compensation act and that in all other cases it is a question of fact to be determined in each particular case.

Section 35 provides as follows:

> "The following persons shall be presumed to be wholly dependent for support upon a deceased employe:
>
> (a) *A wife upon a husband with whom she lives at the time of his death.*
>
> (b) *A child or children under the age of sixteen years (or over said age if physicially or mentally incapacitated from earning) upon the parent with whom he is living at the time of the death of such parent.*
>
> In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employe, but no person shall be considered as dependent unless a member or the family of the deceased employe, or bears to him the relation of husband or widow, lineal descendent, ancestor or brother or sister. The word "child" as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury."

Under the provisions of the foregoing section, a child under the age of sixteen years, or over said age, if physically of mentally incapacitated from earning, is presumed to be dependent upon a parent with whom he or she is living, so that if such parent is killed in the course of employment, it is unnecessary for the claimant to prove actual dependency, in order to be entitled to compensation. Dependency is presumed in such cases. The claimant is not under sixteen years of age; she is past that age, and there is nothing to indicate that she is either physically or mentally incapacitated from earning. As a matter of fact, there is persuasive evidence to the contrary as she was employed to teach a country school soon after the death of her father. We regard this evidence as conclusive of the fact that she is neither physically or mentally deficient, so that there is no presumption under the law that she was dependent upon her fater at the time of his death.

There being no presumption in favor of the claimant she is required, as in other cases, to submit evidence in proof of her claim, clearly establishing her right to compensation. This she has done, and it seems to us that she was wholly dependent upon her father for support at the time of his death. If so, she is entitled to an award of two-thirds of the average weekly wage of her father for the period of six years. As the average weekly wage of the father was $12.00, she is entitled to $8.00 per week for said period of six years, assuming she is wholly dependent.

It is not claimed that her father's contributions toward her support ever exceeded $3.50 per week, but we do not think the amount of the contribution is material, as it is sufficiently established that claimant had no other source of support, and what her father gave her was all she received.

In claims like the one under consideration, where the claimant is barely past the age at which dependency is presumed, while some evidence is necessary to warrant us in finding the existence of dependency, the degree of proof required should not be as great as in the case of a person of full age claiming to be dependent. In this claim the evidence is complete and satisfactory and we are of the opinion that the claimant was wholly dependent upon her father for support at the time of his death.

The fact that the claimant was employed as a school teacher subsequent to the death of her father, and that she is now earning a salary as such teacher, is immaterial. The question of dependency must be determined from facts existing *at the time of the death* of the person upon whom dependency is claimed (See Section 35).

An award is made in the sum of $8.00 per week for the full period of 312 weeks, payable to claimant. An award is also made in favor of Gordon and Hallinger, undertakers, for $150.00.

RE. CLAIM NO. 27942.

BERTHA R. CAVETT, *Claimant.*

(October 21, 1914.)

A sister of full age is neither wholly nor partially dependent upon an unmarried brother with whom she did not reside, although he occasionally gave her small sums of money, where it appears that the sister was regularly employed at the time of her brother's injury and death, and had been so employed for some years prior thereto at an average weekly wage of from $9.00 to $10.00.

STATEMENT OF FACTS.

James E. Cavett was on the 30th day of March, 1914, in the service of The Otis Elevator Company, a subscriber to the state insurance fund. On the last mentioned date deceased was inspecting an elevator in the store of The Krag Company, on North High Street, in the city of Columbus, when he met with an accident resulting in a broken back. He died as a result of his his injury on May 15, 1914.

At the time of his injury he was earning $21.60 per week on an average and had been earning such wages for about two years.

Cavett was an unmarried man and did not maintain a home.

He left surviving him a sister, Bertha R. Cavett, the claimant, and two brothers, both of whom were married and have families.

The facts as disclosed by the proof on file and investigations made by deputies of the Industrial Commission are about as follows: Bertha R. Cavett is 53 years of age and unmarried. She has two brothers living, both of whom are married and have families. Neither of them have ever contributed anything toward her support but she has helped both of them financially in the past few years. One brother, Harry E. Cavett, of Richmondale, Ross County, Ohio, has lived rent free in a house owned by Bertha R. Cavett for several years and the other brother, Chas. C. Cavett, was advanced money by the claimant at the time the deceased was in the hospital following his injury.

At the time of the death of deceased, Bertha R. Cavett was employed as matron at the Y. M. C. A. house in Delaware, Ohio, where she had been employed since September 14, 1909. At the time of the death of deceased she was receiving a weekly wage of $10.00 and was furnished two rooms where she did her own cooking, everything being furnished her except the actual cost of the food stuffs. She began working for the association at $6.00 per week and received advances in her wages of $1.00 per week until the wage of $10.00 per week was reached in May, 1914.

Miss Cavett claims that deceased had contributed toward her support for more than seven years. She could not remember many dates when she received money from him and could not remember exactly the amounts she received. The largest amount she ever received was $25.00 which she received about three years prior to his death. At one other time he gave her a like amount with which to purchase a coat. She claims he gave her money in amounts as low as $2.00 but the usual amounts were $5.00 and $10.00. The money was always given personally and always in cash—never by check, money order or draft—and only once in a letter. She admits her inability to prove such contributions by any third persons not even by her surviving brothers. No bills were ever paid direct by the deceased for her and she has no storekeeper to corroberate her statements. Mr. Hooper of the Y. M. C. A. said that deceased had visited his sister quite often and had seemed very attentive to her but other than that he knew nothing. The claimant owns a house and lot in Richmondale, Ohio, valued at about $500.00 or $600.00, but receives no income from it as she allows her brother to remain in it without charge. She has no other property, according to her statement, with the exception of a few dollars in bank.

Claimant is unable to give the number of contributions made to her by her deceased brother during the time she was in the employment of Delaware Y. M. C. A., nor is she able to give dates except that she remembers that he gave her $10.00 in December, 1913.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

That deceased died from an injury sustained while in the course of his employment is conceded. That he was unmarried and left no children surviving him and no relatives other than the claimant and two married brothers is also undisputed.

The question to be determined by us is whether the claimant, Bertha R. Cavett, was in any degree dependent upon deceased for support at the time of his death. We have claimant's statement, unsupported by documentary or other evidence, that he occasionally gave her sums of money, and we are not inclined to doubt her statements. There was no agreement existing between deceased and claimant at the time of his death whereby he was to contribute to claimant's support in any sum whatever and such payments as were made by him were purely voluntary and not on account of any agreement or understanding nor were they made in fulfillment of any legal duty, but solely, we presume, on account of the love and affection which he bore to his sister, as it appears that she was at the time of his death and for several years prior thereto employed and able to provide for her wants from the wages which she earned.

We recently had occasion to consider the meaning of the word "dependent" in *re. claim No. 52012, Maude M. Hughes, claimant,* decided October 15, 1914, so we do not now feel called upon to discuss at length its meaning. It is sufficient to say that the claimant was not one of those persons whom the compensation law presumes to have been dependent upon the decedent for support at the time of his death and we do not think the proof submitted to us shows as a matter of fact that the occasional gifts of money made to claimant of decedent constituted her a dependent in the eye of the law, and compensation is accordingly denied.

RE. CLAIM NO. 43534.

Chester McDonough, *Claimant.*

(October 21, 1914.)

One who is employed by a manufacturing company to do the painting of its products, the manufacturing company furnishing a place to do the work by the piece or job, the person employed being left free to employ, direct and discharge his helpers, the manufacturing company retaining no control over the mode or manner of doing the work except that the person employed to do the painting and his helpers are required to observe shop regulations applying to all employes of the manufacturing company, is not an independent contractor but an employe. It follows that, being an employe of the manufacturing company, he acted as their agent in employing his helpers, and they, too, are employes of the manufacturing company.

STATEMENT OF FACTS.

The Cincinnati Manufacturing Company, of Cincinnati, Ohio, was on and prior to June 26, 1914, engaged in the manufacture of some elevator cars for use in the new city hospital at Cincinnati. The elevator cars were to be painted white. The company employed one Marqua to paint the elevators. Marqua employed Chester McDonough to assist him in the painting of these cars. While McDonough was thus employed he was injured on June 26, 1914.

It appears that Marqua's contract with the manufacturing company related only to the elevators being manufactured for the city hospital and that he had not been in the service of the company prior to its undertaking to manufacture the elevators. It further appears that the manufacture of elevators was in the line of business which the manufacturing company was conducting. The painting of the elevators was done on the premises of the manufacturing company and the contract with Marqua provided that he should be paid for the painting on the piece work basis, Marqua to hire his own helpers and the amounts paid to Marqua were entered on the books of the company as wages. Marqua employed McDonough and had the right to discharge him. He also gave McDonough his orders. It appears that the company retained no control over Marqua or McDonough further than that they were required to observe the rules and regulations applicable to other employes at work for the company. The painting of the elevators was inspected by the superintendent of the factory and the work was required to be in accordance with specifications submitted by the hospital authorities.

The employer gives the following version of the contract of service:

> "We hired a man a $10.00 each to paint some metal elevator cars white and he hired, we understand, Chester McDonough to assist him, therefore we presume the man who had the contract paid Mr. McDonough as we did not in fact know him. The amount figured on this piece work contract was sufficient to include the payment for the necessary help to carry out such contract. In fact, we understand, the contractor made money on the job. Mr. McDonough was not and is not carried on our payroll; however in turning in our estimate to the state we include all piece work in our payroll and what we pay the state is based upon our regular payroll for men working by the day as well as the amount paid out for piece work."

McDonough claims that while he was painting one of the elevator cars the top thereof fell on him while he was lifting and that he sustained a rupture on the left side.

McDonough's weekly wage at the time of his injury was $12.00.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

Assuming that the claimant sustained an injury as alleged in his application, his right to compensation depends upon the nature and extent of the injury and upon the fact of his being an employe of The Cincinnati Manufacturing Company.

It is claimed that the claimant was not an employe of The Cincinnati Manufacturing Co., but that he was an employe of one Marqua who had entered into a contract with said company to paint some elevator cars which it was manufacturing for the Cincinnati Hospital. It appears that Marqua had agreed with the company to paint the elevator cars for a stated sum for each elevator car, the painting to be done on the premises of the manufacturing company; that he was to employ his own helpers and direct their operations and pay them for their work, they being subject to his direction and not subject to the direction of any other person except that both Marqua and his helpers were subject to the rules and regulations of the establish-

ment applicable to all employes. The work done by Marqua and his helpers was inspected by the superintendent of The Cincinnati Manufacturing Co., and was done according to specifications prescribed by those in charge of the building of the Cincinnati Hospital.

Under the circumstances of Marqua's employment, was he an independent contractor or merely an employe of The Cincinnati Manufacturing Co.? Without entering into a lengthy discussion of the doctrine of independent contractor we conclude that he was simply an employe of the company and being such he acted as the agent of the company in employing the claimant and that the claimant was therefore an employe of the company although he did not appear on the payroll and was paid by Marqua from money received from the company on the piece work basis.

If men employed about a shop or factory on a piece work basis, they having the right to employ their own help, and the proprietor of the establishment not only furnishing the place to work but the materials and tools with which to work, are to be considered independent contractors, there are many large establishments in which hundreds and perhaps thousands of men are working who would not have a single employe, but all would be either independent contractors or their employes.

We have had occasion to consider the doctrine of independent contractor on a number of occasions and while we do not think that the workmen's compensation act has in any way changed or modified that doctrine, we believe that in cases like the one under consideration the relationship does not exist and there is very reliable authority for our so holding.

In the claim of *Foster Robison vs. The Newark Reflector Company,* being No. 2415 under Section 22 of the workmen's compensation act, decided by us this day, we held that where one was employed by a manufacturing company to take charge of a part of the work done in the factory, being paid partly by the piece and partly by the hour for the time devoted by him to the work, he being furnished the place, the tools and machinery with which to do the work and having the right to employ and discharge his own help and having also the right to take in outside work under certain regulations prescribed by his employer that he was not an independent contractor but a mere employe and that one of his employes injured while engaged in some of the outside work was likewise an employe of the company. We decided this case largely on authority of *Andrews Bros. Co. vs. Burns,* 22 C. C., 437; *Toledo Stove Co. vs. Reep,* 18 C. C., 58; and *The Standard Mill Work Co. vs. Bick,* 14 C. C. n. s., 425, and reference is made to our opinion in that claim for a discussion of those cases.

It follows that as Marqua was only the agent of The Cincinnati Manufacturing Company in hiring his employes that they were the employes of the company and McDonough is therefore entitled to compensation commensurate with the disability occasioned by his injury if he received one.

The proof on file is not sufficient for us to determine the extent of claimant's injury or whether what happened to him is to be regarded as an injury at all. His alleged injury is a rupture or hernia and may or may not be regarded as an injury according to the circumstances under which it occurred; and, if it is regarded as an injury the compensation and allowance for medical attendance will further depend upon those circumstances and the application of our rules on hernia to the facts. We are, therefore, referring the claim to the Department of Claims with instructions to procure further proof as to the nature and extent of the alleged injury.

RE. CLAIM NO. 35008.

STEVE HORVAT, *Claimant.*

(October 21, 1914.)

Payment out of the state insurance fund for medical or surgical services will not be made unless such services were rendered or performed by one duly authorized to practice medicine and surgery. (*Section 42 of the workmen's compensation act construed.*)

STATEMENT OF FACTS.

On the 13th day of May, 1914, one Steve Horvat was an employe of The Youngstown Iron and Steel Company.

On that date at twelve o'clock noon Horvat, while in the course of his employment, was injured by getting his thumb and index finger dislocated and his wrist sprained, as the result of which he was disabled for less than a week.

He has filed a claim for medical services which he says were rendered by one Joseph Istochin, who has filed an "Attending Physician's Report" on one of our regular forms, in which he designates himself as a "bonesetter" and in the space on said report wherein the attending physician is required to name the college from which he graduated and the year of such graduation, Mr. Istochin has inserted the word "gifted."

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

As the injury to the claimant did not result in more than one week's disability, no claim is made for compensation, the sole question being as to whether claimant is entitled to be reimbursed for the $2.00 which he paid to one Joseph Istochin, a "bonesetter," for alleged medical services rendered to him in connection with his injury.

Section 42 of the Workmen's Compensation Act is as follows:

> "In addition to the compensation provided for herein, the board shall disburse and pay from the state insurance fund, such amounts for medical, nurse and hospital services and medicines as it may deem proper, not, however, in any instance, to exceed the sum of two hundred dollars; and, in case death ensues from the injury, reasonable funeral expenses shall be disbursed and paid from the fund in an amount not to exceed the sum of one hundred and fifty dollars, and the board shall have full power to adopt rules and regulations with respect to furnishing medical, nurse and hospital services and medicines to injured employes entitled thereto, and for the payment therefor."

The law requires persons attempting to practice medicine and surgery to have proper qualifications therefor, and in order that the public may not be imposed upon, certain requirements are prescribed which it does not appear that Mr. Istochin has complied with. Without discussing at length the provisions of the law, we think it sufficient to say that we do not feel warranted in paying money out of the state insurance fund on account of medical or surgical services rendered by persons who have not been regularly admitted to practice medicine.

It follows that Mr. Horvat, the claimant, having preferred to patronize a "bonesetter," who claims to be qualified by reason of his being "gifted," must settle the bill himself.

RE. PUBLIC EMPLOYE CLAIM NO. 560.

BARBARA MICHAELS, ET AL., *Claimants.*

(October 21, 1914.)

1. Counties, cities, townships, incorporated villages and school districts of the State of Ohio are employers within the meaning of the workmen's compensation act, regardless of the number of employes employed by them. (Sec. 13 of the workmen's compensation act construed.)

2. Casual employes of a county, city, township, incorporated village or school district are entitled to compensation when injured while in the course of their employment.

STATEMENT OF FACTS.

William F. Michaels was on the 7th day of October, 1914, in the service of the county of Fairfield, Ohio, he having been employed sometime previous to that date by the superintendent of the children's home, the same being an institution maintained by the county of Fairfield. Michaels did not work continuously for the children's home. He had worked but three days when on October 7, 1914, he was injured. He was a painter and paperhanger by trade and the work he was doing at the children's home would have consumed about thirty days. While at work on the last mentioned date the ladder which he was using became detached from the comb of the roof precipitating him to the ground. The fall resulted in a fracture of the skull and concussion of the brain from which he died.

He left surviving him the claimant, Barbara Michaels, his widow, a son, Henry Willis Michaels, 15 years of age; a daughter, Irma Catherine Michaels, 12 years of age; a daughter, Ruth Michaels, 10 years of age; a daughter, Mary Cecilia Michaels, 7 years of age; a son, Walter Franklin Michaels, 5 years of age; a daughter, Margaret Louise Michaels, 1 year of age.

The deceased was living with his wife and children at the time of his injury and death.

The evidence discloses that deceased was a skilled workman and usually earned 30c per hour, working ten hours per day. At the time of his injury he was receiving 25c an hour and his noon day meal and it is made to appear to us that his services were considered worth 27c per hour.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

No question exists as to the fact that the deceased was killed while in the course of his employment nor as to the fact of the dependency of his widow and children, but it has been suggested that he was a casual employe and that his dependents are not therefore entitled to compensation under the provisions of the workmen's compensation act.

That deceased was not regularly employed by the county is quite clear. At the same time the work he was engaged in performing would have lasted thirty days so we do not think that there is much in the contention that deceased was a casual employe.

But, granting, for the sake of argument, that the deceased was a casual employe are not his dependents entitled to compensation? The General Assembly in enacting the workmen's compensation act of 1913 undertook to

define who should constitute employers within its meaning and also to define the terms "employe," "workman" and "operative." Section 13 makes a distinction between public and private employers, for according to its terms the state and each county, city, township, incorporated village and school district therein is an employer without regard to the number of its employes, while a private employer is not subject to the provisions of the act unless he employs five or more workmen or operatives regularly in the same business or in or about the same establishment, so that we have no hestitancy in arriving at the conclusion that Fairfield County was at the time of deceased's injury an employer within the meaning of the act although no evidence is presented here as to the number of its employes.

Section 14 defines the term "employe," and again a distinction is made between public and private employes. In private employment, under the provisions of paragraph 2 of Section 14, both casual employes and those not employed in the usual course of trade, business, profession or occupation of the employer are exempt, but in public employment only "officers" and policemen and firemen in cities where policemen's and firemen's pension funds are maintained are exempt.

So, we think that regardless of the number of employes in the service of Fairfield County and regardless of the fact that there might be some question as to whether decedent was a casual employe if he had been engaged in private employment, we think that the law clearly provides for compensation.

Compensation will be granted on the basis of an average weekly wage of $13.75, or $9.17 per week for the full period of 312 weeks, which is ordered paid in bi-weekly installments to Barbara Michaels for the equal benefit of herself and her minor children.

RE. CLAIM NO. 33327.

Wm. F. Patterson, *Claimant.*

(October 21, 1914.)

1. A claim for compensation on account of injury sustained by an employe in the course of employment which results in permanent partial disability such as is defined in the schedule contained in Section 33 of the workmen's compensation act does not abate by reason of the death of such employe from causes other than the injury, even though the amount of such compensation had not been determined prior to his death.
2. Whether compensation which would have been paid to an injured employe had his death not ensued can lawfully be paid to his dependents in the event of his death—*quaere.*

STATEMENT OF FACTS.

On April 30, 1914, William F. Patterson was in the service of the Kilbourne-Jacobs Manufacturing Co., of Columbus, Ohio. On that date he was injured while in the course of his employment by a piece of emery becoming embedded in his left eye. A first notice of injury and preliminary application was filed by Patterson on May 7, 1914, which was followed by the filing of a supplemental application on May 11, 1914. An award was made on June 19, 1914, for permanent partial disability and the claim was carried as a continued claim until the date of Patterson's death, which occurred on August 4, 1914, he having been paid sums aggregating $67.99 prior to his death.

Prior to the time of his death it appeared that the disability resulting from

his injury was the total loss of sight in his left eye, but while the proof of such disability was on file the fact of the disability had not been determined by the Commission. The deceased had he lived would have been entitled to the sum of $8.90, two-thirds of his average weekly wage for a period of one hundred weeks, or a total of $890.00, less the amount which he actually received.

It seems that after sustaining his injury on April 30, 1914, decedent was under medical treatment until the date of his death although he had sufficiently recovered to return to work on July 13, 1914. After this date he was treated twice; namely, on the 19th and 25th of July. On August 1st Dr. C. S. Means prescribed glasses in order to protect the eye and increase vision and to render him comfortable. The decedent at this time was feeling quite well and seemed to be in good condition except for his loss of vision in the left eye. He became ill on Sunday, August 2nd, and Dr. Nesley was called. He gave a history at the Coroner's inquest to the effect that the patient complained of pain in the right side and sickness at the stomach. The doctor considered it a jaundice condition. The doctor made no call from August 2nd until the morning of August 4th when he was called at 9:30 A. M. and when he got to the house the patient was dead. Dr. Sherwood was also called at about 9:00 A. M. on August 4th. He found decedent in a jaundiced condition and gave stimulants in an effort to control his heart action.

No claim is made that the injury sustained by decedent resulted in his death.

By the Commission: — (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

Two questions are presented in this claim, first, whether since the injured employe died prior to the final determination by the Commission of the extent of the disability resulting from his injury, an award can now be made for such an amount as he would have been entitled to receive had he survived; and, second, if such an award is made by the Commission, whether it can be paid direct to the widow of the deceased employe, she being wholly dependent upon him at the time of his death and his sole heir under the statutes of descent and distribution of Ohio.

We have heretofore held that where the extent of the disability resulting from the injury has been determined and an award made and the claimant thereafter dies before the whole amount of the award has been paid, that the legal representative of the deceased claimant is entitled to receive the amount of the award remaining unpaid at the time of the claimant's death. In the claim under consideration the extent of the disability had been determined prior to claimant's death but only a partial award had been made.

While we believe that the workmen's compensation act has provided an entirely new remedy in lieu of those rights formerly existing by virtue of the employers' liability acts and the wrongful death act, yet we may have recourse to those statutes in order to determine what the rights of the claimant would have been had his injury been sustained prior to the enactment of the compensation act. At common law a right of action for personal injury did not survive the death of the injured person; and an action on account of wrongful injury pending at the time of the injured person's death abated by reason of the death of the plaintiff; but the common

law was long ago changed by statute in this state so as to preserve such rights of action, Section 11235 G. C. providing that:

> "In addition the causes which survive at common law, causes of action for * * * injuries to the person or property * * * shall survive; and the action may be brought notwithstanding the death of the person entitled or liable thereto."

It has been held by the Supreme Court of this state that where one is injured and institutes a civil action for damages on account of such injury and dies before final determination of the action that his administrator may prosecute the action to final judgment and that such judgment is not a bar to an action brought by the administrator under the wrongful death act for the benefit of the next of kin, the decision being to the effect that there were two causes of action, one in favor of the injured person only for damages accruing to him during his life time, where the injury did not result in immediate death, and the other in favor of the administrator on behalf of the next of kin, the former predicated upon the sustaining of the injury and the latter upon the death of the injured person as a result of the injury. *The Mahoning Valley Ry. Co. vs. Van Alstine,* 77 O. S., 395.

It seems to us that the question presented to us in this claim is analogous to the situation arising under the employers' liability act where one has been injured and has brought suit for damages and died prior to the rendition of judgment. The compensation act has given injured and the dependents of killed employes a new right and a new remedy on account of injury and death occurring in the course of employment. The right existing under the old law was the right to recover such amount of damages, provided there was any liability on the part of the employer, as would compensate the injured employe for the loss sustained, but the law attempted to specify no particular amount of damages, that being left for determination by a civil action in the courts. For the old remedy of civil action a new remedy has been substituted, viz.: a proceeding before the Industrial Commission for the purpose of determining the amount of compensation to which the injured employe is entitled. The new right is one unknown to the common law and we must first look to the compensation act itself for light on the subject. An examination of the compensation act discloses that there is no specific provision made to cover a case such as the one under consideration. Section 32 of the act provides for payment of compensation in cases of temporary disability and Section 33 provides for the payment of compensation for partial disability. The latter section contains a schedule of certain injuries which are presumed to result in disability as specified in the schedule. This schedule provides that for the loss of an eye 66⅔% of the average weekly wage shall be paid during one hundred weeks. Had the claimant lived he would have been paid two-thirds of his average weekly wage for the period of one hundred weeks as full compensation for his injury. But he died before the amount of the compensation to which he was entitled had been determined by the Commission, although proof was on file showing the extent of his disability and it remains only for the Commission to make a finding as to the amount to which he was entitled.

Section 35 provides for the payment of compensation to the dependents of employes who have been killed in the course of their employment, where death results from the injury within the period of two years, and paragraph two of said section provides that if there are wholly dependent persons at the time of the death the payment shall be 66⅔% of the average weekly

wage and to continue *for the remainder of the period between the date of the death and six years after the date of the injury,* etc. This section contemplates that the employe who dies of his injuries within two years will have received compensation for the entire period of time between the date of his injury and the date of his death for it only provides that the dependents shall be compensated for the remainder of the six year period. The law evidently intended that when an employe died as the result of his injury that the amount he would have been entitled to receive or had received by way of compensation prior to his death should be deducted from the amount his dependents would have received had his death instantly followed his injury.

It is not the object of the compensation law to provide a fund to be administered by the personal representative of a deceased employe but its object is to furnish certain and definite compensation for the financial loss sustained by the employe on account of incapacity resulting from injury in the course of employment; and if the injury results in death and the employe leaves persons wholly or partially dependent upon him for support such dependents are to be compensated for the financial loss they have sustained by reason of the deceased employe's death. The law contemplates that compensation be paid to the injured employe in installments and the rules of the Commission require that payments be made bi-weekly. The question is, when an employe dies before the payments are completed to which he would have been entitled had he lived, whether further payments shall cease. We think not. We think that upon the determination of the extent of the injury compensation follows as a matter of course and the mere fact that payments are made in installments does not effect the right of the injured employe to receive the referred payments but has reference merely to the time when the payments are to be made. Strength is given this view by the provision of Section 41 of the act which gives the Commission power to commute periodical payments into one or more lump sum payments. We do not think a different case is presented where the application for compensation has been filed and partial compensation awarded and the facts are all in evidence warranting a finding by the Commission as to the exact amount to which the injured employe is entitled. In other words, the right to compensation when the amount thereof has once been determined is a vested right. It seems to us that the same is true where the claim is pending and all of the facts have been ascertained which establish such right. Of course, our conclusion in this matter would not apply in a case of *permanent total disability,* for in such case the statute provides that compensation shall continue during the life of the injured employe, the clear implication being that it shall cease upon his death, unless death results from the injury within two years from the date of the injury.

It remains for us to determine to whom the unpaid portion of the compensation shall be paid.

Section 41 of the act of 1913 provides that "compensation before payment shall be exempt from all claims or creditors or any attachment or execution, and shall be paid only to such employes or their dependents."

This provision we have held to preclude the assignment of the right to compensation by an injured employe. See *Re Claim No. 47170, Oscar Berg, Claimant.*

It may be that the words "or their dependents" have reference solely to the dependents of employes who have died *as a result of injury* and not to dependents of an employe who has died from causes other than the injury for which compensation was awarded. At any rate there is a suffi-

cient doubt about the matter to warrant us in hesitating about making the payment to the widow, who is the sole dependent in this case.

The portion of compensation due to the deceased employe at the time of his death will be paid to his administrator for the benefit of the widow upon presentation to the Commission of proof of his having been appointed and qualified by the Probate Court of Franklin County, Ohio.

WINFIELD CLEMENTS, *Employe.* vs. THE COLUMBUS SAW MILL COMPANY, *Employers.*	CLAIM NO. 101. (Under Section 27 of the Workmen's Compensation Act.)

1. Casual employes, though engaged in the usual course of trade, business, profession or occupation of the employer, are excluded from the protection of the Workmen's Compensation Act (paragraph 2 of Section 14 of the Workmen's Compensation Act construed).

2. The Workmen's Compensation Act is a remedial statute and its provisions should be liberally construed.

3. The word "employer," as used in the Compensation Act, as applied to private employment, means every person, firm, and private corporation, including any public service corporation, that has in its service five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written (paragraph 2 of Section 13 of the compensation act construed).

4. A corporation which owns and operates a saw mill which is not in operation on all of the working days of the year, but when in operation requires five or more workmen to operate it, is an "employer" within the meaning of the Workmen's Compensation Law.

5. An employe of such an employer who had been employed as one of the workmen on the saw mill on such days as the mill operated, during a period of at least four months, is not a casual employe. The fact that some of the employes employed in the operation of the saw mill were not employed for any very definite periods of time does not constitute them casual employes within the meaning of the statute, and the number of such workmen should not be deducted from the total number employed in making a calculation to ascertain whether five or more employes are regularly employed.

(October 21, 1914.)

The Columbus Saw Mill Company is a corporation duly organized and operating under the laws of the State of Ohio, doing business in the City of Columbus, Ohio. It operates a saw mill and on January 8, 1914, Winfield Clements was one of its employes and on that day, while in the course of his employment, he received an injury which resulted in his total disability from January 8, 1914, to May 8, 1914, said disability being temporary only and not resulting in any permanent, partial or total disability. During the period of his disability he incurred medical expenses amounting to $12.50, he having been treated by Dr. V. A. Dodd, of Columbus.

At the time of Clements' injury The Columbus Saw Mill Company had not become a subscriber to the state insurance fund, nor did it do so in the month of January, 1914.

Complainant has filed an application with the Commission in the usual form, in which it is alleged that The Columbus Saw Mill Company employed five or more workmen or operatives regularly at the time he sustained his injury. The Columbus Saw Mill Company has filed an answer in which it admits the claimant was employed by it at a weekly wage of $12 per week, and that on or about January 8, 1914, he was injured while so employed, and alleges that such injury was not caused by any fault or negligence on its

part. It further says that for the year preceding said injury and for the six months preceding said injury it did not employ and had not employed regularly or have in its service five or more workmen or operatives regularly in the same business or in or about the same establishment operated by it under any contract of hire, express or implied, oral or written.

At the hearing at which oral testimony was taken one J. N. Thompson, the secretary-treasurer of the saw mill company, testified as follows:

Q. Are you one of the employes?
A. No sir, I am an officer.
Q. What do you do?
A. I might say superintendent of all the business.
Q. Do you work about the mill?
A. I don't do a great deal of work about the mill.
Q. You are in charge of the business?
A. I have general charge and give orders.
Q. What is your official title?
A. Secretary-Treasurer.
Q. The work you do as secretary and treasurer does not take much of your time, does it?
A. It takes perhaps not a great part of it.
Q. You keep the minutes of the meetings?
A. Yes sir.
Q. And notify the directors when there will be meetings?
A. Yes sir.
Q. You take charge of the money?
A. Yes sir.
Q. Draw checks?
A. Yes sir.
Q. What do you do outside of that?
A. Keep all the records and buy most of the timber. I am not at the plant a great deal. Am outside of the plant two-thirds of the time.
Q. Where is your mill?
A. On Dublin Avenue, 344; just on this side of the river, by the penitentiary.
Q. What positions do the four men you employ hold?
A. When our mill is running it is only a part of the time we employ five or six men; but last year we didn't put in half of the time.
Q. What do they do?
A. We have a mill crew, we have an engineer, a sawyer, one working at the back end of the mill handling slabs and timber and a couple of others.
Q. Were there many working there the day this man was injured?
A. No, it was not running. We were installing a new engine on that day.
Q. All of them saw mill company employes?
A. Yes.
Q. You were installing the engine yourself?
A. I had a man in charge and the work was being carried on under his direction. He was paid as one of our employes.

Q. By what process of reasoning do you arrive at the conclusion that you did not employ five or more employes? Do you take a certain period of time and the number of days the mill was in operation and then make an average?

A. I took the total number of days and reduced that to an average.

Q. In ascertaining that average, did you use the number of days the mill actually worked or the full number of days covering the period of them?

A. *The full number of days covering the period of time.*

Q. If you had taken it the other way it would have shown that you employed five or more?

A. Yes.

Q. And whether you were counted or not, it would have shown that?

A. Yes, it probably would.

BY THE COMMISSION: — (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The question here presented is whether The Columbus Saw Mill Company is such an employer as is required by the terms of the Workmen's Compensation Act to contribute to the state insurance fund maintained for the purpose of providing compensation to injured and the dependents of killed employes.

From the evidence it appears that the number of employes average four and a fraction if the total number of working days are taken into consideration for a specified period of time, but if the time during which the mill was actually in operation is to be considered, the company had in its employ more than five workmen or operatives, not including the secretary-treasurer who, it appears from his testimony, devotes his whole time to the affairs of the company and does not merely perform duties pertaining to the position of secretary-treasurer. Such being the case he is an "employe" of the company, and should be considered in ascertaining the number of employes employed.

Paragraph 2 of Section 13 of the compensation act defines "employer" as

> "every person, firm and private corporation, including any public service corporation that has in its service five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written."

Paragraph 2 of Section 14 of the Workmen's Compensation Act defines the term "employe" as being

> "every person in the service of any person, firm or private corporation, including any public service corporation employing five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work for hire under the laws of the state, but not including any person whose employment is but casual, or not in the usual course of trade, business, profession or occupation of his employer."

The language used in these two sections would seem to indicate that it is the *service* regularly in the same business, or in or about the same establishment that is to furnish the basis for determining whether the employe comes within the purview of the act. It does not mean that the workmen must be permanent employes, but rather that there must be five

or more workmen regularly employed in the business — that is, it must be essential to the conduct of the business that five or more employes be employed. It may be that the personnel of the employes may change, but so long as five or more are kept employed in the same business we think that the employer comes within the provisions of the act.

In the claim under consideration it is very clear that whenever the mill was in operation there were more than five workmen employed. In other words, in order that the mill may properly operate there must be five or six men engaged therein. While it is true that the mill operates only a part of the year, yet the business may be defined to be a regular business of operating a saw mill, when work is being done in the mill. Simply because the mill shuts down at certain periods of the year, it does not follow that while it is working it has not in its service five or more workmen, because its average employment would not be five or more if the time while it was not working were to be taken into consideration. When the mill is engaged in its regular business, there are more than five workmen or operatives employed therein under a contract of hire, and consequently we think that in this case the employer comes within the provisions of the statute to which we have referred, for when it does business as a saw mill there are more than five men in its service.

It is claimed by the employer that it had only one man regularly employed and that when its mill was in operation it depended upon picking up men to secure a sufficient number to operate the mill and that as the claimant was not considered as a regular employe, that he should be classed as a casual employe and that therefore compensation should be denied him, even though there were five or more men working in the mill at the time of his injury.

We do not think that there is anything in this contention. The compensation act must be given a liberal construction as it is a remedial statute, and it should be treated as inclusive rather than exclusive whenever any reasonable construction so justifies. The mere fact that the same persons were not continuously employed would have no bearing unless it could be said that some of them were casual employes, which we do not think is at all true here.

We have not had occasion to give much consideration to the question as to what constitutes a casual employe within the meaning of the compensation act. The word "casual" is from Latin *"casualis"*, which means "coming without regularity"; "happening or coming to pass without design and without being foreseen or expected." The term as used in the Workmen's Compensation Act was probably copied from the Massachusetts act, as the language is identical and the language of the Massachusetts act is very similar to that of the British act which provides that the word "workman" shall not include "a person whose employment is of a casual nature *and* who is employed otherwise than for the purposes of the employer's trade or business." The Ohio act applies to all employes except casual employes and those not employed in the usual course of trade, business, profession or occupation of the employer (see paragraph 2 of Section 14, above quoted, for the exact language). Under the English Compensation act, the courts have held that a casual employe who is engaged in the course of the trade or business of his employer is covered by the compensation act, because of the use of the conjunctive "and". A literal construction of Section 14 of the Ohio act would seem to exclude two classes of employes from the operation of the law, viz., casual employes and employes not employed in the usual course of the business, profession or occupation of the employer.

The New Jersey Workmen's Compensation Act excludes all employes of a casual nature, whether they are employes in the employer's trade or business, or otherwise. In the case of *Hubb vs. Lynch,* decided by the Essex County Common Pleas Court of New Jersey and reported in 36 N. J., L. J., 87, a workman was engaged in moving some furniture and in cleaning the yard, by a woman who kept a boarding house. On the day before the workman had been employed in selling wood for another person. He was engaged by the woman who kept the boarding house to come for a couple of hours and when he had been at work about two or three hours he went into the yard to attach a clothes line to a pole. He climbed up the clothes pole and on his way down the pole gave way, throwing him to the ground and injuring him. It was held that he was a casual employe.

In the case of *Mueller vs. Oelker Manufacturing Company,* decided by the Essex County Common Pleas Court of the State of New Jersey and reported in 36 N. J., L. J., 117, a workman applying for work was asked if he understood the use of saws and said that he did and he was then employed and put to work without any definite agreement as to the amount of wages he was to receive. On the same day that he started to work he was injured by one of the saws. It was contended by the employer that there was no contract of employment on the ground that the workman had deceived him when he told him that he understood the use of saws. The employer also contended, as in the claim under consideration, that he was a mere casual employe. It was held that the workman was not a casual employe and that he was entitled to compensation.

Under the Massachusetts act, which, as above stated, contains the precise language of the Ohio act, the Industrial Accident Board of that State has given the act practically the same construction as was given the New Jersey act in the case of *Mueller vs. Oelker Manufacturing Company,* supra. In the case of *Krogan vs. Independent Ice Company, 1 Massachusetts Workmen's Compensation Reports, 231,* the employe testified before the Committee of Arbitration that he did not know whether he was to be hired for an hour, for five hours or for any particular time. He stated that the person who gave him the information that he should have employment told him that he could go to work on an ice team, and that the person who actually hired him told him that he did not know how long the employment would last. The Committee of Arbitration held that the employment was casual and the employe was not entitled to compensation, saying:

> "In this case, Grogan's employment for the Independent Ice Company was in the usual course of the trade, profession, business or occupation of his employer; but it appears to be casual in the dictionary definition of 'occurring at uncertain times'; 'one who does casual or occasional jobs' (Murray); 'a laborer or artisan employed only irregularly, (Century); 'arising from chance'; 'not certain' (Johnson); and 'coming at times without regularity' (Imperial).
>
> It also appears that the requirements of the master in this case carry out the idea of a casual nature of the employment, viz., an exceedingly hot Saturday; the necessity of the Independent Ice Company to put in an extra supply of ice to customers, which would last until the next Monday, and in consequence the putting on by the ice company of an extra team to bring ice from the store-house to the town square, so that for this day the retail supply teams might be relieved, because of the unusual condition, of their regular custom of going to the ice house to replenish their supply. Employment on

the extra supply team for this special emergency was, therefore, in the opinion of the arbitrators, because of these conditions, casual in both character and tenure.

The English Workmen's Compensation Law, on which the Massachusetts act is largely modeled, says: 'A workman does not include a person whose employment is of a casual nature, *and* who is employed otherwise than for the purposes of the trade, business, etc.'

In the Massachusetts Workman's Compensation Act, however, instead of the word 'and', as used in the English act, the co-ordinating participle 'or' that marks an alternative, corresponding to 'either', is used. It is evident, therefore, that the words of the Massachusetts act must be construed to mean that when the employment is either casual or not in the course of the trade, profession, etc., of the employer, either alternative will exclude an injured workman from the benefits of the act."

The findings of the Committee of Arbitration were reviewed by the Industrial Accident Board of Massachusetts which took additional testimony and found that when Gorgan made his contract of employment with the Independent Ice Company, nothing was said as to how long or how short a time his work was to continue, that he was not a casual employe and that he was entitled to compensation, and overruled the findings of the Committee of Arbitration. In deciding the matter the Board made use of the following language:

"While it is true that he was hired as a result of what might be called an emergency because of the hot weather and whatever exigencies there might have been in connection with the work, it is also true that the employe might have been employed all of Saturday and all of the following week and possibly might have been permanently employed.

The Board further finds on these facts that the employe being hired as a laborer, it cannot be said that his work was casual. From the employe's standpoint this was as much a part of his business as any other kind of work while working for Mr. McElroy (McElroy being the name of the previous employer). He worked, perhaps, with some degree of steadiness for Mr. McElroy; nevertheless, his employment with Mr. McElroy was liable to be in one place today and in some other place tomorrow; neither was the nature of the work from the standpoint of the ice company casual, because it was part of its business. It was not a mere incident, it was in the regular natural course of the business of the ice company."

We have given this question very careful consideration and our conclusion is that paragraph 2 of Section 14 of the compensation act excludes casual employes, as well as those not engaged in the usual course of the business, profession or occupation of the employer. In this respect the scope of its exclusion is greater than that of the English act which excludes only casual employes who are also not engaged in the usual trade or business of the employer. It is greater, too, than the New Jersey Act which excludes casual employes only, while it is co-extensive with that of Massachusetts.

We have frequently found occasion to remark that the compensation act should be liberally construed, as it is a remedial statute, so that, applying this rule of construction, we have no difficulty in arriving at the conclusion

that the claimant was not a casual employe. He had been employed for some months prior to the date of his injury, and if our construction of the statute is as liberal as that given by the Massachusetts Industrial Accident Board in the case above cited, no room for doubt is left.

There remains the further question as to whether, considering the intermittent character of the operation of the employer's mill, any of its five of more employes which were required to operate the mill while it was running were casual employes. Applying the same rule of construction above mentioned and following the case of *Grogan vs. Independent Ice Company, supra.*, we think it sufficiently appears from the testimony of the secretary-treasurer of The Columbus Saw Mill Company that when the mill was in operation it required five or more workmen to operate it. That being the case, we do not think that any of the operatives could be considered as casual employes, however short their period of service might be.

We think the claimant has established his claim for compensation and an award is made for the full period of the disability, less the first week, being $17^{3}/_{7}$ weeks, at $8 per week, amounting to $139.43. An award is also made for medical expenses amounting to $64.50.

FOSTER ROBISON, *Employe.*
vs.
THE NEWARK REFLECTOR COMPANY, *Employer.*

CLAIM NO. 2415,
(Under Section 22 of the Compensation Act.)

1. Where "A", the owner of a factory, employed "B" to take charge of a part of the work done in the factory, paying "B" partly by the piece and partly by the hour for the time devoted by him to the work, and where "B", on account of "A" not having sufficient work to keep him busy all the time, was permitted to take in outside work, "A" furnishing the place, the tools and machinery with which to do such outside work, "B" employing his own help for the work he did for "A", as well as for the outside work, the relation of independent contractor does not obtain as between "A" and "B" either as to work done for "A" or as to the outside work.

2. A helper of "B" injured on one of "A's" machines while in the course of employment in working on outside work is to be regarded as "A's" employe, and "A" having elected under the provisions of the compensation act to pay compensation direct to his injured employes, is required to compensate such injured employe.

3. Employes of employers who have elected to pay compensation direct to their injured employes are entitled to the same compensation and to receive the same amounts to cover expenses for medical attendance, etc., from their employers as employes of employers who have contributed to the state insurance fund are entitled to receive from the fund.

STATEMENT OF FACTS.

The Newark Reflector Company at the time of the alleged injury of the complainant was conducting its operations under the elective self-insurance provisions of Section 22 of the workmen's compensation act.

The claimant, Foster Robison, was injured on March 24, 1914, at which time he claims to have been an employe of The Newark Reflector Company. The injury consisted of the entire loss of the right thumb and fracture of the right wrist. As to the nature and extent of the injury there does not seem to be any controversy. The claimant's weekly wage at the time of the injury was $18.00 and as to this fact there seems to be no controversy.

It seems that one B. M. Huffman had been employed by The Newark Reflector Company to take charge of a plating room, he having an agreement with the company that he should do its work on the piece basis, with

certain exceptions when he was to be paid at the rate of 35c per hour. The Reflector Company furnished the machinery, power and appliances, and in order that Huffman might be kept busy, he was permitted to do outside work. That is, he was permitted to do work in the shop of The Newark Reflector Company. When engaged in the latter work he would issue a requisition on the company for such material as he needed and would make a statement to it of the time consumed by him. From the evidence submitted we understand that he was charged 35c per hour plus 55% for the time consumed in doing such work and was also charged with the cost of the material used, with 15% added for book-keeping and other charges. Huffman was responsible to the company for these charges, whether or not he was paid for the outside work. In doing such outside work, the bill for the same was sent out in the name of Huffman and the name of the company in no way appeared. In doing work for the company and for himself, Huffman employed such helpers as he needed and paid them himself.

On March 24, 1914, the claimant, Foster Robison, while working under Huffman *on outside work,* was injured as hereinbefore described. At the time he was hurt he was getting brass ready for the nickel plating of an automobile lamp door. It seems that this door caught in a buffing machine twisting the arm of claimant around the spindle, thereby cutting the thumb so as to require amputation. Claimant testifies that he was working for The Newark Reflector Company and that he was employed by them, but he qualifies this evidence by the statement that Huffman paid him, he being employed by the latter, although the Superintendent of the Reflector Company employed the men who were hired in other departments. Payment of wages to him was made by check of B. M. Huffman on a Newark bank. He states that he understood from Huffman that when the latter took outside work, he paid the company a percentage. He also admits that he was doing outside work at the time he was injured, but he does not state whether he knew *at the time of the injury* that he was engaged in such work, excepting what may be inferred from his statement that for outside work a shop order had to be obtained from the office of the company by Huffman. Huffman states that he furnished no tools or machinery, that he was paid as other employes, that he paid Robison, who was not on the company's pay-roll and that he rented the equipment and purchased material when doing outside work. Huffman also had advertisements printed under the name of "Huffman Plating Works", in which he offered to do work of the character which was being done at the time of the injury. He gives as a reason for this that the company did not want the public to know that they were taking outside work. The work for the company was to have preference, and Huffman decided on the price that was to be charged for the outside work, made out the bills, made the collections and his contract did not provide that the company should furnish all material used. When asked if it was his work and not that of The Newark Reflector Company, Huffman answered, "I solicit the work".

A representative of the company testified that they made no profit on the outside work, the object being to allow Huffman to earn sufficient money to pay him to do their work. Huffman was considered an employe of the company, but Robison was not carried on the pay-roll, was not considered an employe and nothing was ever said to him by the superintendent of the Reflector Works, no control was exercised over him, no orders were given him by the company; nor did it pay for any of Huffman's stationery or advertisements or make suggestions as to the price to be charged by him for the outside work, or the amount of wages to be paid Robison. The bills

for outside work were taken care of entirely by Huffman. At the same time he testified that an employe hired by Huffman, when doing piece work for the company, would be considered by him as the company's employe. This representative of the company, who was its superintendent, hired all of the employes except Robison, the claimant.

BY THE COMMISSION: — (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The facts in this case are not as clear as we would like to have them, but it seems to be conceded that claimant was injured in the manner and to the extent alleged in his application for compensation, and that his average weekly wage at the time of his injury was as stated by him. But the employer claims that he was not its employe at the time he sustained the injury.

It may be conceded that, in order to come within the purview of paragraph 2 of Section 14 of the compensation act, the employe, workman or operative must be in the service of the employer, under a contract of hire, express or implied. That is, he must be an "employe" as distinguished from what is known in law as an "independent contractor", so that if Huffman was an independent contractor, Robison must be looked upon as his employe, rather than as an employe of The Newark Reflector Company.

In the case of *McAllister et al. vs. The National Fireproofing Company,* the same being claim No. 83 under Section 27 of the workmen's compensation act, decided by this Commission on August 31, 1914, we had occasion to consider the doctrine of independent contractor quite thoroughly, and after examining and considering the court decisions in this and other states relative to the question, we concluded that the principal element to be taken into consideration in determining whether the relation of independent contractor exists, is whether the principal contractor retains or assumes direct control over the work or the workmen of the alleged sub-contactor, and we held that it was immaterial whether the right of control was *exercised* or not, the fact of its *existence* being the determining factor.

In order to determine whether the principal retains or assumes control over the workmen of the alleged sub-contractor, it is necessary to take into consideration all of the circumstances and facts of each particular case. In the claim under consideration, The Newark Reflector Company, which is sought to be held liable, furnished the place of employment, machinery and materials, and it paid Huffman, who is alleged to be the independent contractor, by the piece. But it seems that the company did not have enough of its own work to keep Huffman steadily employed, so that it permitted him to take in work from outside parties in order that his time be fully occupied. In doing such outside work, he used the same tools, worked in the same place as he did when he was doing piece work and working by the hour for the company. It seems the method adopted in dealing with Huffman was to credit him at the rate of 35c per hour for the time employed, as though he were putting in his time for the company, and then charging at the rate of 35c per hour, plus 55%, and in addition thereto, the cost of all materials used, plus 15%. It is not clear to us what the parties had in mind in making this contract, but we assume it was merely an arrangement whereby Huffman would utilize the time which he would otherwise have to spend in idleness, and whereby the company would not suffer loss on account of Huffman's doing the outside work. It is claimed by the company's superintendent that they made no profit on the

outside work, the object being to allow Huffman to earn sufficient outside money, so that it would pay him to retain his position with the company and do their limited amount of work. It is also stated he was considered an employe of the company, especially when doing the company's work, but that Robison was not on their pay-roll, that they did not exercise any supervision over him and that he was paid by Huffman, and they therefore conclude that he was Huffman's employe and not theirs.

In the case *McAllister et al. vs. The National Fireproofing Company,* before referred to, we held that where the owner of a coal mine entered into a contract with a man to operate the mine, by the terms of which contract the owner was to furnish all posts, timbers, track material and implements, and the man with whom the contract was made was to mine the coal in a workmanlike manner, do necessary track laying and timbering, preserve the entry in good condition, do draining, etc., and furnish all labor necessary for the mining of the coal, the coal to be placed in the owner's cars as taken from the mine and the operator to receive from the owner a stated price per ton for all coal so taken from the mine, it being part of the agreement that the owner was to take the pay for all of the coal so mined, the relation of independent contractors did not exist, and that an employe who was injured while at work in the mine was entitled to compensation from the mine owner, he having failed to comply with the provisions of the Compensation act either by paying a premium into the state insurance fund or electing to pay compensation direct to his employes under the provisions of Section 22 of the act. In the McAllister case it further appeared that the owner of the mine had the right, though it was not entirely clear as to whether it was exercised, to have supervision over the work that was being done in the mine. Our decision in the McAllister case was made largely on the authority of *Andrew Brothers Company vs. Burns,* 22 C. C., 437; *Toledo Stove Company vs. Reep,* 18 C. C., 58; and *The Standard Mill Work Company vs. Bick,* 14 C. C. n. s., 425.

In *Andrews Brothers Co. vs. Burns* it appeared that a rolling mill company employed a boss roller who hired his own assistants and paid them himself, and received for the product of the labor of himself and the men employed by him a fixed price per ton. The relation between the company and one of the persons so hired by the boss roller was held to be that of employer and employe, on the theory that the general superintendent of the company had authority at any time to dismiss the boss roller or any of his assistants, so that the employer retained the right and power of direction, and the mode and manner of doing the work.

In *Toledo Stove Co. vs. Reep,* the company was engaged in building stoves for the market. They took the iron and modeled it into different shapes and castings and put them together in the form of complete stoves. One Sodden was to attend to the mounting of the stoves and furnished his own men therefor and received a certain price for each stove, the company furnishing the place of employment, the machinery, etc. The court in this case held that the relation of independent contractor did not exist and intimated that there must be a contract for a "job" in order that such relation might exist, and held that Sodden was simply a foreman and in employing and discharging his help he acted solely as the agent of the company.

In *The Standard Mill Work Co. vs. Bick,* one Swartz was operating a part of the factory owned by the company, under a contract that the company should furnish the plant, machinery, oil and material and Swartz should employ all of the workmen, *the company to have no control or supervision*

over them, and the court held that Swartz was not an independent contractor and that the help employed by him were to be considered employes of the company.

In the case of *Jacobs vs. The Fuller & Hutsinpiller Co.,* 67 O. S., 70, the defendant company owned a furniture factory and employed a third party to manufacture furniture for it, furnishing all materials, tools and machinery for that purpose, in which was a machine which was safe to operate under proper instructions, and dangerous to operate without instructions as to the manner of operating it. The person contracted with to operate the factory employed his own workmen, one of whom was injured in attempting to operate said machine. In an action by the injured employe against the owners of the factory, it was held by the Supreme Court that the defendant Company could not avail itself of the defense that the plaintiff was an employe of an independent contractor, because, under the circumstances of the employment, *a resulting injury might have been anticipated as a direct or probable consequence of the performance of the work contracted for, if reasonable care should be omitted in the course of its employment.* We do not think, however, that the principle involved in the case just referred to is involved in the claim under consideration by us, as it does not appear that the machinery or the place of employment was one so dangerous that the Reflector Company might have anticipated injury to the employes therein, but it is an illustration of one of the main exceptions to the rule that the principal is not liable for injury to the employes of an independent contractor.

We do not deem it necessary to further consider authorities on the subject of independent contractors, as only recently we went into the subject at length in deciding the claim of *McAllister et al. vs. The National Fireproofing Company.* It is inconveivable to us that Huffman, in doing the outside work he was permitted to do, was allowed to have charge of the plant, machinery, tools, etc., of the company without the company claiming or reserving any right whatever to supervise his work. While the evidence on this point is very vague, it does appear that the company's work was to have preference over the outside work and that Huffman was required to make requisitions on the company for materials used in the outside work. These facts indicate that there was a certain supervision over his work and when it is considered that Huffman is acknowledged by the company to have been its employe when he was performing services for them, it is quite clear, under the decisions before cited, that Robison would also be their employe when assisting Huffman in such work; and since we think the company retained a sort of supervision over the outside work, we do not think the principle of independent contractor applies and therefore Robison was the employe of the Reflector Works at all times.

It follows that he is entitled to compensation and an award is made in the sum of $720.00, the same being the amount fixed by paragraph 1 of the schedule contained in Section 33 of the compensation act which provides that for the loss of a thumb $66^2/_3$ of the average weekly wage shall be paid to the injured employe for the full period of sixty weeks. A medical bill amounting to $..... is also ordered paid.

RE. CLAIM NO. 50018.

SARAH JOHNS, ET AL., *Claimants.*

(October 22, 1914.)

1. An independent contractor who is injured while in the execution of his contract is not entitled to compensation under the provisions of the workmen's compensation act.
2. One who enters into a contract with another to tear down and remove a stack for a specified sum of money, the contract providing that the person undertaking the work shall furnish his own tools and appliances, hire his own help, and deliver the materials at a specified place for a stipulated sum of money, the person for whom the work was done retaining no right of supervision over the mode and manner of doing the work, is an independent contractor.

STATEMENT OF FACTS.

John Oscar Johns was injured on July 30, 1914, and as a result of said injury, died on the same day, leaving surviving him a wife, Sarah Johns, and two daughters, Catherine, aged 16, and Gertrude, aged 13, who were living with him at the time of his death and who claim to have been wholly dependent upon him for support at the time of his death.

The Essex Glass Company, of Mt. Vernon, Ohio, was a subscriber to the state insurance fund at the time of the injury and death of Johns.

Johns had been employed by a company engaged in the manufacture of glassware at Utica, Ohio, for two or three years prior to his death, as a blacksmith and millwright. His average weekly wage is claimed to have been about $35.00 per week.

On or about the 28th day of July, The Essex Glass Company, of Mt. Vernon, purchased a stack about 90 feet high standing on the site of a plant in Utica which had recently burned, the idea of the company being to move this stack from Utica and use it on their new factory which they are to build in the near future. In some manner Mr. Johns secured the information that this stack had been bought by The Essex Glass Company and telephoned from Utica to Mt. Vernon in order to learn who was to tear down the stack. He was informed that the contract for this work had not been let at that time and thereupon he offered to do the work of tearing down this stack and loading it on freight cars at Utica ready for shipment to Mt. Vernon, for the sum of $100.00. Mr. Lamb, of The Essex Glass Company, notified Johns that he would call him the next day if the contract was accepted. A day or so later Mr. Lamb communicated with Johns to the effect that the officers of The Essex Glass Company had accepted Johns' bid. It is further stated that Johns was to furnish all tools and appliances necessary to be used in the work, hire his own help, etc. Thereupon Mr. Johns proceeded with the work of demolishing and loading the stack. It was while thus employed that the boom pole with which he was working at the top of the stack became overbalanced, striking Mr. Johns in the back and knocking him to the ground below. Johns was employing two helpers in the work of tearing down and removing the stack.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

Before compensation can be awarded in this claim we must determine that the deceased was an employe of The Essex Glass Company, of Mt. Vernon, Ohio, and that he was killed while in the course of his employment.

We do not think the evidence submitted warrants the conclusion that Johns was an employe, but on the contrary, we think he was an independent contractor.

In the claim of *McAllister et al. vs. The National Fireproofing Company,* decided by us on August 31, 1914, we had occasion to very carefully consider the law of independent contractor, and its application to cases arising under the workman's compensation act, and reference is made to our opinion in that case for a discussion of the authorities on the subject.

We think the facts show that the thing which Johns undertook to do was to complete a certain specified piece of work for a specified sum of money. He had never been employed by The Essex Glass Company before, the work was not done on the premises of the Glass Company, nor was it done under their supervision or direction, nor did they have any right to direct or supervise the work. They had no voice in determining whom Johns should hire as his assistants, but he was free to hire and discharge at will such assistants as he chose and as many as he chose. There is not a scintilla of evidence to suggest that Johns was an employe in the sense in which that word is used in the compensation act.

There are certain well-defined exceptions to the rule of independent contractor, one of which is that when the work contracted to be done is of such a character that injury to third persons is liable to occur unless care is exercised in doing the work the rule does not apply. In such cases the person having the work done cannot relieve himself from liability for damage done to third persons, by contracting with an independent contractor to execute the work. See: *Covington and Cincinnati Bridge Co., vs. Steinbrock,* 61 O. S., 215; *Circleville vs. Nueding,* 41 O. S. 465; and *Railroad vs. Morey,* 47 O. S., 207.

We do not find, however, that this exception to the general rule has ever been applied in favor of the independent contractor himself, but only in cases where the work being done by him results in injury or damage to the person or property of third persons. If, instead of Johns being injured, one of his helpers had been injured, we might have deemed it our duty to consider the principle recognized in the cases above cited as applicable, but that is not the case presented here.

Believing as we do that Johns was an independent contractor and that the compensation law does not afford protection to those sustaining that relation, compensation is denied.

RE. CLAIM NO. 22734.

JOSEPH HORA, *Claimant.*

(November 5, 1914.)

1. There is no presumption that the father or mother of a grown son, who is unmarried and who resides with them, is in any degree dependent upon him for support.

2. A son who was of full age made his home with his father and mother and turned over a large portion of his earnings to his father who made no charge against him for board, clothing and lodging. The father owned real estate which was listed for taxation at $12,440.00 and the mother owned real estate listed for taxation at $4,730.00, the tax value in each instance being not more than 60% of the actual value of the real estate, the same being encumbered to the extent of $6,000.00. The father was 66 years of age and was not a wage earner; the mother was 59 years of age and not a wage earner.

HELD: That neither the father nor the mother were either wholly or partially

dependent upon the grown son for support, within the meaning of the workmen's compensation act.

STATEMENT OF FACTS.

On January 27, 1914, one Frank Hora was in the service of The Lorain Coal & Dock Company and was employed as a miner in one of that company's mines in Belmont County, Ohio. On that day said Frank Hora was killed while working in the mine. The injury which caused his death resulted from burns from an explosion of gas. There were no eye-witnesses to the injury and it is claimed by the employer that the explosion occurred during deceased's working hours, but that his employment did not call him to the place where the accident occurred.

An application for compensation is filed by Joseph Hora on behalf of himself and Annie Hora, they being father and mother of the deceased, aged respectively 66 and 59 years.

Joseph Hora and his wife, Annie, have living seven children, four of whom are boys and three girls. Joseph Hora, Jr., the eldest son, is married and does not live with the other members of the family or contribute anything toward their support. Rudolph Hora, another son, aged 27 years, is employed as a driver in a mine, receiving $2.84 per day. Another son, Lewis Hora, aged 23 years, is employed as a teamster, his average daily wage being $2.00. Eddie Hora, the youngest son, is twenty-one years of age and is employed as a driver at Wheeling Creek Mine, his wages being $2.84 per day. Mrs. Annie Schenck, Mrs. Harry Hose and Mrs. James Derry, daughters, are all of full age and married.

At the time of the death of Frank Hora and for some time preceding that event, the father and mother and their five sons lived together at or near Bridgeport, Ohio, and constitute a family. The five sons worked in or about the mines in the vicinity and it seems that each of them turned over the greater portion of his earnings to the father who maintained the home and made no charge to the sons for board, clothing and lodging.

The father owned five pieces of real estate in Pease Township, Belmont County, and four pieces in West Bridgeport, having an aggregate tax value of $12,440.00. Annie Hora, the mother, owned one piece of real estate in Pease Township, Belmont County, valued for taxation at $1,270.00 and two lots in West Bridgeport valued at $1,100.00 each and another valued at $1,260.00, making a total tax valuation of $4,730.00. Upon a portion of this real estate there is a mortgage amounting to $6,000.00. The proof on file indicates that the property was not appraised at full value, Mr. Hora being of the opinion that it is not on the tax duplicate for more than 50% of its actual value, and the county auditor being of the opinion that it is on for about 80% of its value, so that the real value of the property is somewhere between $20,000.00 and $35,000.00.

By the Commission: — (Opinion by Yaple, Chairman; Hammond, Commissioner, concurs; Duffy, Commissioner, dissents.)

The proof on file raises some question as to whether the decedent was killed while in the course of his employment, but as we have not been furnished with the exact details of his death, and as his injury occurred while he was in the mine and during the hours of his employment, we assume that his death occurred while in the course of employment, so that the only question for us to determine is whether the claimants were dependent in any degree upon the deceased for support.

There can be no doubt that under the workmen's compensation act a condition of dependency must exist in order that payment of money may lawfully be made out of the state insurance fund on account of the death of an employe. This is manifest from the provisions of Sections 35 and 36 of the compensation act, the former prescribing the persons to whom payments shall be made and the amount of such payments, and the latter section prescribing the methods of making such payment. In this respect it is entirely different from the statute of this state giving a right of action for damages on account of wrongful death, which provides for the bringing of an action by the personal representative of the deceased for the benefit of the next of kin. In providing that in the event of the death of the employe compensation shall be paid to the *dependents* of such employe instead of to his *next of kin,* the Ohio law is analogous to all of the workmen's compensation acts with which we are familiar, and, likewise, to some wrongful death statutes, although, as we have just pointed out, it differs in this respect from the Ohio wrongful death act. The word "dependent" has been defined to mean "dependent for the ordinary necessaries of life for a person of that class and position in life, taking into account the financial and social position of the dependent." *1 Bradbury Workmen's Compensation, 2nd Ed., 571.*

Under the English compensation act, which has served as a model for most of the compensation acts of the states, the question of dependency has been held to be one of fact to be determined from the evidence in each particular case.

In the first workmen's compensation act of Ohio (102 O. L., 524), commonly known as the workmen's compensation act of 1911, the provision on the subject of dependence and dependency as contained in Section 28 thereof, were substantially the same as the provisions contained in the first three paragraphs of Section 35 of the act of 1913 (103 O. L., 72), but the provisions found in paragraph 4 of the latter act were not contained in Section 28 of the former, nor were such provisions found elsewhere in that act.

In *re. claim 41, Laura M Schaeffer et al., claimants,* decided by the State Liability Board of Awards on June 14, 1912, the question was reviewed at length and the English cases on the subject were considered as well as the provisions of the wrongful death act of the State of Ohio. It was determined that as a general rule, the question of dependency was, as under the English act, usually a question of fact, but that our statute should be more liberally construed than the English law when the alleged dependents were persons whom the law made it the duty of the deceased to support. In the Shaeffer claim the alleged dependents were a widow and a minor child, and the board said:

> "In view of the provisions of the statute just referred to (the statute requiring a father to support his legitimate or illegitimate children under 16 years of age), we do not think it was the intent of the Legislature that such construction should be placed upon the word "dependent" as would deprive those of compensation whom it was made the statutory duty of the killed workman to support, and for the neglect of which duty he might during his lifetime have been convicted of a felony and sent to the penitentiary. After giving the question thorough consideration, we have concluded that the widow and minor children of a killed employe are presumed to be dependent upon him for support, but that such presumption is a rebuttable one.

> What facts are necessary to overcome such presumption, we do not think it necessary to consider, further than to say that in this claim the facts do not, in our judgment, overcome the presumption."

Subsequent to the decision of the State Liability Board of Awards in the Shaeffer claim, the compulsory workman's compensation act of 1913 was passed, Section 28 of the act of 1911 becoming Section 35 of the act of 1913, with the added provisions found in paragraph 4 of said section 35, the provisions of which are in substance that a wife and children under the age of 16 years (or over that age if mentally or physically incapacitated from earning) are presumed to be dependent upon the husband and father for support, if they were living with him at the time of his death. The last paragraph of Section 35 then goes on to state that

> "In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employe, but no person shall be considered as dependent unless a member of the family of the deceased employe, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister."

From the foregoing it is clear that there is no presumption that a father or mother is dependent upon a son for support, and that compensation cannot be paid in such cases unless it is made to appear that they were, as a matter of fact, actually dependent, or unless they are shown to have been of such age and financial condition as to bring them within the purview of the statute which makes it a penal offense for a child to fail to maintain an indigent parent. No such showing is made in this case. On the contrary, it appears that the father and mother together own real estate valued at from $20,000.00 to $35,000.00. There is no evidence before us as to the exact amount of income derived from this property, but we have a right to assume that it yields the amount of income usually derived from property of that value, so that it cannot be said that the claimants were wholly dependent upon the deceased for support at the time of his death.

In *Dazy vs. Appenaug Co.*, 89 Atl., 160, decided by the Supreme Court of Rhode Island, the facts showed that the deceased lived with his father and mother and gave them his wages, receiving in return $1.00 a week as spending money. He also received his board, lodging and clothing from them. The father was earning $11.50 a week and the mother $8.00 a week. The father owned the dwelling in which the family lived and he and his wife owned two other houses which were mortgaged for $500.00. The father was receiving from his son's wages a net profit of not more than $5.00 a week, and the family savings were about $10.00 or $12.00 a week. The Superior Court found from these facts that the son left no person wholly or partially dependent upon his earnings. The cause was taken to the Supreme Court where the judgment was affirmed, the court making use of the following language:

> "The test of dependency is not whether the petitioner, by reducing his expenses below the standard suitable to his condition in life, could secure a subsistance for his family without the contributions of the deceased son, but whether such contributions were needed to provide the family with the ordinary necessaries of life suitable for persons in their class and position. * * * The petitioner is not bound to

> deprive himself of the ordinary necessaries of life in which he has been accustomed in order to absolve the respondent from the payment of damages, nor can he on the other hand demand money from the employer for the purpose of adding to his savings or investments. The expression 'dependent' must be held to mean 'dependent for the ordinary necessaries of life for a person in his class and position and does not cover the reception of benefits which might be devoted to the establishment or increase of some fund which he might desire to lay aside."

A statute of the state of Washington provides that:

> "no action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine by reason of such death, if he have a wife or child living, or, leaving no wife or issue, *if he have dependent upon him for support * * * at the time of his death,* parents, sisters or minor brothers."

The case of *Kanton vs. Kelly,* 118 Pac. 890, was a case brought under favor of the statute above referred to. The decedent was 19 years of age, unmarried, and at the time of his death was earning $3.00 a day. He gave all his earnings to his parents. The father, who was 46 years of age, testified that he had but little work to do; that he could not do physical labor as he had formerly done, as he had some trouble with his back. The testimony also showed that the family had lived in the city of Seattle for eleven years and had accumulated considerable property in that city, title to which was held in the father's name. A barn brought a rental of $20 per month. A stall was rented for $10 a month, and the family had a home consisting of two lots, on which was a dwelling house and another barn. They also owned two lots on another street. All of the real estate was appraised for about $17,000. The father had owned a four-horse team, 2 two-horse teams with wagons and had formerly owned a general teaming business, but he had sold this property and gone to work for $2.50 a day, but for some time before the death of his son, had been unable to get employment. The court followed an earlier decision wherein it had held that while the statute did not mean wholly dependent, or that the parent must have no means of support or livelihood other than the deceased, yet there must be some degree of dependency, some substantial dependency, a necessitous want on the part of the parent and the recognition of that necessity on the part of the child. It was further held that dependence was not to be measured either by physical inability to make a living, mental incapacity, or incompetency to successfully carry on business. A man might be lacking in one or more of these qualifications and still be independent of the assistance of others. In deciding the case the court said:

> "Granting that the surviving father now finds it harder to do physical labor than formerly, it cannot be held as a matter of law that a man 46 years of age, who has sufficient business capacity to accumulate a share of property equal to or greater than the acquisitions of the average man, who has successfully carried on a teaming business, and who is practically out of debt, and who but for the stress of the immediate times would no doubt find employment, is a dependent.
>
> As said in the Bortle case, there must be a substantial need on one side and a substantial financial recognition of that need on the other side to make out a case of dependency within the meaning

of this statute. No such necessity is here shown. If the deceased turned over all his earnings to his parents, the record raises a more probable inference that it was in keeping with the old country custom of parents taking the earnings of their children.

In any event, it is certain that the earnings of the deceased went not to meet any real necessity, for there was none, but to increase the general prosperity of the family."

In the claim under consideration it appears that Mr. and Mrs. Hora and their grown sons constituted a family, each member of which contributed toward the maintenance of all, and if the facts disclosed that the father and mother owned no property and were of such an age as to make it unlikely that their personal earnings would be sufficient to maintain them, we would have no difficulty in finding that they were partially dependent upon the deceased, but the facts show that they owned a considerable amount of real estate. If the Rhode Island and Washington cases are to be followed, and it seems to us that the reasoning on which said decisions are based is sound, the Horas—father and mother—own sufficient property to afford them such income as would adequately maintain them in the manner in which they have been accustomed to live and in a manner befitting their station in life, without the contributions of their children. In other words, regardless of contributions from their children, to furnish themselves with the ordinary necessaries of life to which they had been accustomed. That being true, we cannot understand how they could be dependent in any degree upon the deceased. If the money contributed by the decedent and the other children was merely for the purpose of enabling their father and mother to add to their savings and increase their property holdings, instead of being contributed for the purpose of enabling the family to obtain the ordinary necessaries of life, no condition of dependency would exist. In fact, the manner of living of the Hora family seems to have been in keeping with the old country custom of parents taking the earnings of their children, the surplus of the joint earnings going to create and maintain a bank account for the purchase of property or for some similar purpose.

It seems to us that the father and mother in this case were no more dependent upon the deceased at the time of his death than the deceased was upon them—that is, that no stronger claim is here made by them than would have been made were the conditions reversed and the father had been killed in the course of his employment. Of course, in that event, the widow would have been conclusively presumed to be dependent upon him, but there would be no presumption in favor of the sons and their rights would have to be determined according to the facts in existence at the time of the death, and the facts here would as well sustain a claim of dependency on the part of the son under such circumstances, as is shown here on the part of the father and mother.

The proof in this claim is not at all as clear as we would like to have it, but deciding the case on the facts before us, we must conclude that there was no dependency on the part of either of the claimants upon the decedent, Frank Hora, at the time of his death and compensation is denied.

RE. CLAIM NO. 59456.

LEWIS SPENCER, ET AL., *Claimants.*

(November 9, 1914.)

A coal miner nineteen years of age lived with his father and step-mother and five half-brothers and sisters, ranging in age from two to thirteen years. His father had been an invalid for more than two years. The step-mother was not a wage earner and the whole family subsisted upon his earnings. He was killed while in the course of his employment.

HELD: That his invalid father, his step-mother and half-brothers and sisters were wholly dependent upon him at the time of his death.

STATEMENT OF FACTS.

Arlie Spencer was on the 9th day of October, 1914, an employe of The National Coal Company, of Cambridge, Ohio. He was a coal miner and on the last mentioned date was killed while at work in the mine. His employer certifies that he was injured "by jumping off of the motor and being caught between car and rib." He was nineteen years and six months of age at the time of his death and his average weekly earnings for the year prior to his death were $11.16.

He left surviving him his father, 49 years of age, a step-mother, 32 years of age, and five half-brothers and sisters with all of whom he was living as a member of the family. The father was an invalid and deceased was the only wage earner of the family, and all of his wages went to their support.

BY THE COMMISSION: — (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The sole question to be determined in this claim is whether the claimants were either wholly or partially dependent upon the deceased for support at the time of his death. The facts are not involved in any doubt. The decedent's family consisted of his father, who had been an invalid for more than two years prior to his death, a step-mother, 32 years of age, and five half-brothers and sisters, the oldest of which was thirteen years of age and the youngest two years of age. One of our inspectors who was assigned to investigate the claim and make report thereon states:

> "The father is in poor health and has been unable to work for two years, and deceased was the sole support of this whole family, who live in a tumble down shack rented from a farmer seven miles out of Byesville, Guernsey County, Ohio. The surroundings are deplorably bad and the entire family are in extreme want right now for clothing and food.
>
> The deceased boy took all of his pay home each pay day, and they managed in some mysterious manner to exist upon the meager earnings. I have no hesitancy in saying that of all the cases investigated by me up to the present time this case is without doubt the worst, and appeals strongly for immediate assistance."

The proof on file leaves no doubt in our minds that all of the members of the family were wholly dependent upon the deceased at the time of his death and compensation is awarded at the rate of $7.43 per week, being two-

thirds of the average weekly wage of the decedent, for the full period of 312 weeks, as provided by law, the same to be payable to Lewis Spencer for the equal benefit of all the dependents.

A funeral bill of $86.00 is also ordered paid to S. W. Conner, of Byesville; a hospital bill of $5.00 to The Cambridge Hospital; a medical bill of $5.00 to Dr. F. C. Huff, of Cambridge, and another medical bill of $11.00 to Dr. E. L. Lowthian, of Byesville.

RE. CLAIM NO. 54960.

C. E. Cooper, *Claimant.*

(November 9, 1914.)

1. A partnership is an "employer" within the meaning of paragraph 2 of Section 13 of the workmen's compensation act.
2. A member of a partnership who performs services for the partnership for which he receives money which is designated as "wages", is not an employe of the partnership within the meaning of the workmen's compensation act.

STATEMENT OF FACTS.

The claimant, C. E. Cooper, was injured on September 10, 1914. The injury consisted of a loosening of the lower floating rib on the left side from the backbone. The injury occurred while claimant was standing upon a wooden horse on a cement floor when one of the legs of the horse slipped off, throwing him to the floor, a distance of about three feet.

The claimant and F. W. Johnson are carpenters by trade and worked together under a partnership arrangement. It is not stated with any great degree of clearness as to just what the partnership arrangements were, but it seems that both of the members of the firm recieved wages from the firm the same as their other help.

The proof on file indicates that the injury was sustained while in the course of employment.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The sole question to be determined in this claim is whether a partner may be an employe of the partnership of which he is a member, under the provisions of the workmen's compensation act.

Paragraph 2 of Section 13 of the compensation act of 1913 defines employers to be "every person, firm, and private corporation including any public service corporation, that has in its service five or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written."

Paragraph 2 of Section 14 of the compensation act of 1913 defines employes to be "every person in the service of any person, firm or private corporation, including any public service corporation employing five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work for hire under the laws of the state, but not including any person

whose employment is but casual, or not in the usual course of trade, business, profession or occupation of his employer."

While the word "partnership" is not used in either of the sections above quoted, the word "firm" undoubtedly includes a partnership, so that partnerships are employers within the meaning of the act, and their employes are entitled to compensation in the event of injury. But can a member of a partnership be an employe of the partnership to which he belongs? We think not. We do not find that the exact question has been determined under the compensation act of any state of the Union, but in Great Britian the question was determined in the case of *Ellis vs. Joseph Ellis & Co.*, 7 W. C. C., 97; 92 L. T., 718. In this case, Collins, M. R., said:

> "The question is whether the deceased can be considered as a "workman" within the act, and the members of the partnership as his employers. The act is not applicable to such a case as the present, where the person injured is in the position of both employer and employe. An arrangement between partners such as we have here, in which one partner agrees to do work for the partnership in respect of which he is to be paid what are called 'wages,' does not really create the relation of employers and employed. Such an arrangement is in reality nothing more than a mode of adjusting the accounts between the partners. It does not alter the fundamental position of each partner, which is that of a co-adventurer with each member of the partnership."

We think it quite clear that the Ohio workmen's compensation act has a two-fold purpose; first, the protection of the employer from litigation; and, second, the compensation of every employe injured while in the course of his employment, regardless of the question of fault or negligence. In order that compensation may be paid in any particular instance, the relation of employer and employe must exist. These cannot be one and the same, or to put it in other words, a person cannot be both employer and employe at the same time. If the claimant was a member of the partnership, he could not be his own employer, as he could have no contractural relationship with himself. It is not made to clearly appear to us just what method the partnership followed in the distribution of its profits and the sharing of its losses. Evidently the partnership was conducted on the theory that there would be profits and no losses, and as the work done by it was on a small scale, the payment of the individual members of the firm from the partnership moneys was made in the same manner as wages were paid to employes of the partnership, this being the method of dividing the profits.

It matters not that the money which the claimant received from the partnership was termed "wages" by the members of the partnership, as we cannot conceive of any act that the members of the partnership might or could do to make one of its members one of its employes. There must be an employer on the one side and an employe on the other; and, as we have before stated, an individual cannot assume such a dual relation. Compensation is denied.

RE. PUBLIC EMPLOYE CLAIM NO. 114.

FRANCES E. LYMAN ET AL., *Claimants.*

(November 12, 1914.)

1. A city is an "employer" within the meaning of paragraph 1 of Section 13 of the Workmen's Compensation Act.
2. A lieutenant of police of a city which does not maintain a policemen's pension fund is an "employe" within the meaning of paragraph 1 of Section 14 of the Workmen's Compensation Act.
3. A policeman who was required to be on duty during certain hours of each day, and who was subject to call at any time, day or night, was run down and killed by a train while walking along the right of way of a railroad company. At the time he was killed he had been on duty the number of hours specified by the rules of the department and had left police headquarters to go home. The reason for his presence on the right of way of the railroad company was not satisfactorily explained by the evidence.

HELD: That the conclusion that he was killed while in the course of his employment is not justified.

STATEMENTS OF FACTS.

On the 23rd day of April, 1914, David G. Lyman was a lieutenant of police of the city of East Cleveland, Cuyahoga County, and on that date, while walking along the right of way of the Nickel Plate Railroad, he was run down by a train and killed.

Lyman's hours of duty were from 6 p. m. to 6 a. m.

Lyman resided at Melbourne Road near Phillips Street and on the night previous to his death he had been on duty at the police station at the City Hall. At 6 o'clock in the morning he went off duty and told F. H. Boers, a fireman, who was also on duty at that time at the City Hall, "I think I had better be going now as I have been around here long enough." As far as the proof on file discloses, Boers was the last man he spoke to or who saw him alive.

The direct route for home from the City Hall and the route which he usually traveled was from the City Hall on down Euclid Avenue to Lakefront Avenue, thence to Hayden Avenue, thence to Eddy Road, thence to Phillips Street and thence to Melbourne Road on which he lived. By taking this method of going home, he would go underneath the Nickel Plate Railroad tracks on Eddy Road. It seems that Lyman's wife had requested him to bring home a loaf of bread, and as he did not have the bread when he left the City Hall, it is thought, although there is no direct evidence of this fact, that when he reached the point where the Nickel Plate tracks cross Eddy Road, he remembered his wife's request to bring home a loaf of bread, and as he had neglected to purchase it on Euclid Avenue, he decided that he would walk down the the tracks to Superior Avenue, where there are several stores between the Nickel Plate tracks and Melbourne Road, where he could purchase the bread. Whether this was his purpose in walking down the right of way of the railroad is only a conjecture, but it was while walking down the right of way in the direction of Superior Avenue that he was run down and killed. He walked down the Nickel Plate tracks from Eddy Road until within about 20 feet of a viaduct on Superior Avenue. At the place where he was killed there are four tracks, two used by the Nickel Plate Railroad, and two by the Belt Line Railroad. The Belt Line Tracks are north of the Nickel Plate Tracks.

At the coroner's inquest, Mrs. Minnie Van Brocklin testified that she saw Lyman walking down the south track. When he was within about 20

feet of the Superior Bridge, a switch engine went east on the south track of the Belt Line Railroad. This engine passed him and also a train on the track of the Nickel Plate Railroad. The switch engine passed this train about 300 feet beyond the point where it passed the deceased. As shown by the coroner's inquest, the engineer of the passenger train blew his whistle and rang his bell, but just as the train reached him, the deceased stepped off the south track of the Nickel Plate and in front of the passenger train. The train hit him and knocked him over on the south track of the Belt Line where he was found.

The railroad tracks over which Lyman was walking at the time he was run down are elevated, being about 20 feet above the surrounding land, and the cross streets all pass underneath the railroad tracks.

In the statement made by the Director of Public Safety of East Cleveland, he says, "At the point where the Belt Line Railway and the Nickel Plate Railway meet—a few hundred feet east of the Superior Street Bridge —and which point is on Lieutenant Lyman's way home, there is a switch on which freight cars are left standing at times. We had received complaint in this office of tramps and disorderly car riders that were annoying property owners along the line of the Nickel Plate and Belt Line Railways about the time that the Lieutentant's accident occurred; in fact, about 25 arrests had been made. As far as we can learn, the Lieutenant was upon the Railway's property making an investigation."

A copy of the rules and regulations governing the police department of the city of East Cleveland is in evidence. The following is a quotation from Rules 10 and 10-P, which have to do with the duty of police service of the city:

Rule 14:

> "Each member of the police and fire department shall devote his whole time and attention to the business of the department, and he is expressly prohibited from following any other calling or being employed in any other business. At all times they must be prepared to act immediately on notice that their services are required. They shall always be considered on duty for the purpose of discipline."

Rule 10-P:

> "Patrolmen on duty shall report at headquarters at 6 a. m. and be relieved from duty at 6 p. m. Patrolmen on night duty shall report at headquarters at 6 p. m. and be relieved from duty at 6 a. m. Patrolmen on both day and night duty shall be allowed one hour for meals; schedule to be arranged by the Chief of Police."

Lyman left surviving him a widow, who is one of the claimants; and Mrs. Lela R. MacLaren of Los Angeles, California, daughter of deceased by a former marriage. Both have filed applications, the wife claiming to have been wholly dependent upon her husband for support and the daughter claiming to have been partially dependent upon him.

Deceased was the recipient of a salary of $90 per month at the time of his death.

The city of East Cleveland does not maintain a policemen's pension fund.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

As the city of East Cleveland did not at the time of decedent's death maintain a policemen's pension fund, the deceased was an employe of the city within the meaning of paragraph 1 of Section 14 of the Workmen's Compensation Act, and if he was killed while in the course of his employment, his dependents, if any, are entitled to compensation out of the state insurance fund.

The question first to be determined is whether the deceased was in the course of his employment at the time he met his death. He was a member of the police force of the city assigned to night duty, and the injury which resulted in his death was sustained by him while on his way home from the police station after his hours of service had terminated, it appearing from Rule 10-P of the rules and regulations of the police department that patrolmen assigned to night duty are required to report at headquarters at 6 p. m. and be relieved from duty at 6 a. m. the following morning. Other evidence discloses that there was no deviation from this rule in the case of the deceased, but that he left the police station for home shortly after 6 o'clock in the morning.

Ordinarily, an employe is not entitled to compensation who is injured or killed after he leaves his employer's premises and starts on his way home. But the decedent was a public employe. He was a lieutenant of police and his place of employment was not only the police headquarters but, if duty required him to leave the headquarters, the whole territory embraced within the corporate limits of the city must be regarded as his place of employment. His duty was likely to call him into any of the streets, lanes, alleys, parks or public places of the city, or on and along the rights of way of the railroads passing through it, and into public houses and places of entertainment within the city. Rule 14 of the regulations of the department which is set forth in full in the statement of facts provides in substance that members of the police department must be prepared at all times to act immediately on notice that their services are required. It is also provided "that they shall always be considered on duty for the purpose of discipline." This latter provision, we think, should not be construed in such a way as to require us to hold that a policeman is in the course of his employment whenever and wherever and under whatever circumstances he may happen to be injured or killed. If that provision of the rules and regulations needs any explanation, it is contained within its terms, for it specifically says that the provision is "for the purpose of discipline." Our construction of the rules in question is that the members of the police department of the city of East Cleveland—and we assume this to be true in practically all of the cities of our state—have certain definite hours of duty, and that within those hours a member of the police force should be presumed to be in the course of his employment. As to other hours of the day not included within his period of active duty, a policeman is regarded as being subject to call and it is his duty upon call or notice that his services are required, to respond immediately. The notice or call must come from a superior officer; or, in the event the policeman should witness infraction of the laws of the state or the ordinances of his city, we think he could act upon his own initiative without receiving notice or orders so to do from a superior officer. We think this is especially true in cases of felony, and in such cases the policeman might so conduct himself as to be regarded as in the course of his employment without having received orders or notice from a superior officer

and without having actually witnessed the commission of the crime, as for instance, where a murder or a burglary has been committed and the policeman has information which in his judgment would enable him by prompt action to apprehend the person who had committed the crime. In such cases we think a policeman should be regarded as "on duty" or in the words of the statute, "in the course of his employment."

The deceased left the police headquarters at which he was stationed during the night, at 6 o'clock a. m., having completed his hours of continuous duty. When he left the station house and started for his home, he was "off duty" and out of the course of his employment, unless before the time he was required to report for duty in the evening he received notice or orders from his superior officer to render some service, or unless he should, upon his own initiative undertake the performance of some duty. It is proper, therefore, to inquire carefully as to the reason for the presence of the deceased at the place where he received the injury which resulted in his death. As his death resulted almost instantly after he received his injury, we do not have the benefit of his own statements as to why he was on the right of way of the railroad. Nor is there any other evidence which explains his presence there. It is thought by the Director of Public Safety that he might have gone down the right of way of the railroad on his way home in order to investigate complaints which had been made with reference to tramps annoying residents in the vicinity, but no orders were given him to make the investigation and if he did so, it was purely upon his own initiative. Another conjecture is that he was walking down the right of way to reach a store at which he could purchase a loaf of bread which his wife had requested him to bring home. These are conjectures, pure and simple, and we do not think we are justified in concluding that either of them are true. It is true that we are not required to have direct evidence as to the existence of every fact to be found by us before making an award, but it is necessary for us to have facts in evidence from which such jurisdictional facts can be deduced, and the deduction must be a reasonable one. If a fact necessary to authorize an award cannot be arrived at except by a guess, the claimant has failed to prove his claim. From the facts in evidence in this claim, an inference favorable to the claimants can only be arrived at by a guess, because one element necessary for us to arrive at the conclusion that decedent was in the course of his employment is absent, viz., that he received a notice or order from a superior officer, the execution of which took him to the place where he met his death, or that prior to going there he received information upon which he felt authorized him to act upon his own initiative. It is just as probable that he walked down the right of way to get a loaf of bread as to perform some official duty. In fact, it is more probable. A deduction that is equally consistent is, that he simply took a "short cut" along the railroad track on his way home.

As we have frequently held, it is incumbent upon the claimant to offer evidence establishing all of the jurisdictional facts necessary to authorize an award or to establish facts from which such jurisdictional facts may be deduced. This the claimants have not done and compensation is denied.

RE. CLAIM NO. 53298.

IDA BELL MONROE, *Claimant.*

(November 12, 1914.)

A coal company which owned mineral lands and operated coal mines located thereon, having temporarily suspended the operation of its mines, leased a portion of its lands to two of its former employes, who opened up a small mine thereon and paid the company a stated sum per ton as royalty for the coal removed therefrom. In conducting their operations they employed, paid and discharged their laborers and were not under the supervision of the lessor. They sold their coal in the open market. They employed one of the lessor's employes, and he was injured while in the course of his employment and died from his injuries.

HELD: That the deceased employe was not an employe of the lessor at the time he received his injury.

STATEMENTS OF FACTS.

The Emma Coal Company, of Jackson, Ohio, is a corporation owning and operating certain coal mines in Jackson County.

James Monroe was an employe of The Emma Coal Company for several years prior to the month of February, 1914, at which time, by reason of the suspension of business in the company's mine, it ceased to give him employment.

Soon after the company ceased to operate its mine, it leased a portion of its mineral lands to two of its former employes, John Boswell and John Vitito, who opened up a small mine, and under their contract of lease, paid to the coal company a stated sum for each ton of merchantable coal removed from the ground. The coal company had no supervision over the mining operations, the same being carried on by Messrs. Boswell and Vitito on their own account, they marketing the coal mined and employing and paying their own labor, etc. James Monroe was one of their employes and while in the course of his employment was injured by a fall of coal in the mine, said injury being sustained on July 22, 1914, and death ensuing as the result of the injury, on October 9, 1914.

The deceased left surviving him the claimant, Ida B. Monroe, his widow, and three children aged 14, 12 and 10 years respectively, all of whom were wholly dependent upon him for support at the time of his death.

It appears that Monroe had been in the employ of The Emma Coal Company for many years prior to the month of February, 1914, when said company suspended work. It further appears that it was the expectation of The Emma Coal Company to resume the operation of its mines on September 1, 1914, and that upon resuming operations, it was its intention to give employment to Monroe, as he was considered to be one of their miners.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

The claimants seek to obtain compensation from the state insurance fund on the theory that James Monroe, upon whom they were dependent for support at the time of his death, was an employe of The Emma Coal Company at the time he received the injury which resulted in his death.

We do not think their claim is supported by the evidence. On the contrary, we think it very clear that he was not an employe of The Emma Coal

Company at the time of his death. Messrs. Boswell and Vitito were lessees of The Emma Coal Company. They were not operating a mine for the coal company, as might have been the case had the coal company been paying them a stated amount per ton for mining coal from its mine. On the other hand, they were paying the coal company a royalty of so much per ton for all the coal they took from its mine. They were lessees of the coal company and they are not to be regarded as operating the mine for it. They could employ and discharge whom they chose. The coal company reserved no right of supervision over their operations. All they were required to do was to pay the coal company a stipulated price per ton for the merchantable coal mined. When they did this, they had discharged their obligations to it, and it was under no obligation to them, except to allow them peaceable possession of the premises leased to them.

The fact that Monroe was an old employe of the coal company and that it expected him to return to its service when it resumed the operation of its mines on or about September 1, 1914, is not material, for the fact is as plain as a fact can be that he was not in their service at the time of receiving the injury which resulted in his death.

This claim evidently was presented on the theory that the facts are similar to those in the case of *McAllister vs. The National Fireproofing Company,* decided by us on the 31st day of August, 1914. The facts are not at all similar. In that case The National Fireproofing Company had entered into a contract with one Sims for the operation of one of its mines. Sims was to operate the mine, employ and pay his own help in so doing, and deliver the coal from the mine along a railroad line adjacent thereto, at a stated price per ton which he received from The National Fireproofing Company, it having a certain right of supervision over the mode and manner of doing the work. Neither The National Fireproofing Company nor Sims had become subscribers to the state insurance fund, and in a proceeding brought against the company by the dependents of one of Sims' helpers who was killed in the mine while in the course of his employment, we held that Sims was not a lessee of the mine, and that he was not an independent contractor in the strict sense of that term, but that in the employment of his helpers, he merely acted as an agent for The National Fireproofing Company and therefore such persons as he employed as helpers were really employes of the company. It will be seen that the facts were entirely different in that case from the one under consideration.

Our conclusion is that the claimants are not entitled to compensation and their claim will be denied.

RE. CLAIM NO. 45010.

ELIZABETH A. JONES, *Claimant.*

(November 12, 1914.)

An employe was killed while in the course of his employment leaving surviving him a widow whom he married in South Wales in 1877. He was a native of Wales and left his wife in 1896 and came to America and in 1900 contracted a bigamous marriage with a woman with whom he lived and supported until the day of his death, she having no knowledge of his former marriage and believing herself to be his lawful wife. He had contributed nothing toward the support of his first wife since before the time of his bigamous marriage.

HELD: 1. That his lawful wife was not dependent upon him for support at the time of his death.

2. That the woman with whom he contracted the bigamous marriage was dependent upon him for support at the time of his death.

STATEMENT OF FACTS.

On July 15, 1914, David H. Jones was in the service of E. McShaffrey and Son, of Akron, Ohio.

On the last named date said David H. Jones received an injury while in the course of his employment which resulted in his death on the same day. He left surviving him the claimant, Elizabeth A. Jones, with whom he was living at the time of his death and to whom he was married on May 12, 1900. It is also claimed that the deceased, who was a native of Wales, was married on December 7, 1877 to Mary Phillips, at Llanelly, South Wales, and that several children were born as the result of said marriage; that about twenty years ago Jones came to America leaving his wife and family in Llanelly. There is no proof on file to show that deceased ever contributed to the support of his wife and family at Llanelly subsequent to his leaving Wales for America. Nor was he ever legally divorced from his said wife.

It appears that the claimant, Elizabeth A. Jones, was ignorant of the prior marriage of David H. Jones at the time of her marriage to him on May 12, 1900, and that at no time did she have any intimation that he had a wife and children living at the time of his marriage to her until the matter was brought up in church in March, 1913, and the matter investigated, but it appears that no evidence could be had at that time to substantiate the claim that he had a wife and children living in Wales, and the claimant states that she did not believe the rumor and continued to live with him, believing that she was his lawful wife.

The alleged widow, living at Llanelly, South Wales, has filed a number of affidavits and statements of citizens and officers of the town of Llanelly, tending to prove their acquaintance with the deceased and their knowledge of his marriage in Wales, of his coming to America in the year 1896, and leaving his wife and family in Llanelly.

The average weekly wage of deceased at the time of his death was $14.58. No application has been made by the alleged widow and children of decedent residing in Wales.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

David H. Jones was killed while in the course of his employment. By virtue of the provisions of the Workmen's Compensation Act, those who were dependent upon him for support at the time of his death are entitled to compensation out of the state insurance fund. The proof on file clearly establishes the fact that he had at least one wife, and possibly two. It is claimed that he was married to a woman in South Wales on December 7, 1877, and that he resided with her in that country and that several children were born to the union prior to his leaving Wales for America sometime in the year 1896. The proof on file convinces us that he had done nothing toward suporting his wife and children in Wales for many years prior to his death. In 1900 he married the claimant without going through the formality of obtaining a divorce from his first wife, and it appears that claimant was ignorant at the time she married him of the fact that he had a wife living and remained ignorant of the fact to the day of his death, although a report was circulated in the year 1913 among the membership of a church to which

they belonged to the effect that Jones had a wife living in Wales and the matter was investigated. The nature of the investigation does not appear from the proof on file, nor does it appear who conducted the investigation, but whatever was done at the time appeard to satisfy wife No. 2 that the stories in circulation concerning the existence of wife No. 1 were idle gossip, and that the charges had no foundation in fact, so she continued to live with him till the day of his death.

The official death certificate filed by the claimant gives the age of the deceased as 49 years, 6 months and 29 days, so that if the age given in the death certificate is correct and he was the David H. Jones who married Mary Phillips at Llanelly, South Wales, on December 7, 1877, he could have been but 14 years of age at that time, so that we are inclined to doubt the claim made in regard to the first marriage, although the proof submitted is of a very positive nature.

But assuming that the claim as to the former marriage is correct, what are the rights of the parties?

No claim has been filed for compensation by the alleged wife and children living in South Wales, but in the event of such claim being made, we have no hesitancy in saying that inasmuch as the deceased had not contributed anything to their support for many years, that they were not dependent upon him for support at the time of his death.

It remains for us to determine the status of the claimant with whom deceased was living as his wife at the time of his death. If he had a former wife living from whom he had not procured a divorce, the claimant was not at any time his lawful wife. Neither was she his common law wife. But she is not basing her claim upon such a relation, as the formality of a marriage contract had been observed, as evidenced by the certificate of the Probate Court of Tuscarawas County, Ohio, showing that the records of that court disclose that David H. Jones and Elizabeth A. Jenkins were married by Albert M. Eley, a minister of the Gospel, on the 12th day of May, A. D. 1900; so that so far as the claimant is concerned, she was the lawful wife of the deceased, although technically, the relationship was bigamous on his part.

Similar cases to the one under consideration have arisen frequently under the laws governing fraternal beneficial associations. In the case of *Starr vs. Knights of Macabees of the World et al.,* decided by the Circuit Court of Lucas County in 1905 and reported in 6 C. C. N. S. 473; affirmed by the Supreme Court of Ohio, 74 O. S. 501, it was held that a woman who had occupied the relation of wife for a period of 12 years in the honest belief that she was the wife of the man with whom she was living, which relation, however, was unlawful in that he had a wife living at the time from whom he had never been divorced, was a "dependent" within the meaning of the charter and by-laws of the benefit society which authorized the designation of "dependents" as beneficiaries in policies of insurance issued to its members, and that as against the lawful wife or heirs of the assured, she was entitled to the proceeds of the policy of insurance issued to him by the society without notice of such relation, in which she was referred to as his wife and designated as the beneficiary, *notwithstanding the policy was issued after she had discovered the unlawful relation.* The rules and regulations of the benefit society provided that "no beneficiary or life benefit certificate shall be made payable to any person other than the wife, children, *dependents,* mother, father, sister, brother, aunt, uncle, nephew or niece of the member."

The court held that the lawful wife was not entitled to the benefits

accruing from the policy of insurance, as the second wife was specifically named therein and described as "wife," and that if she was not the lawful wife, that she was at least sustaining the relation of *"dependent,"* and under the by-laws of the society, she might be entitled to the money on that ground, though it is not clear on which ground the court gave her the proceeds of the policy.

The Workmen's Compensation Law provides that in the event of the death of an employe, such death resulting from injury sustained in the course of employment, that the "dependents" of such employe at the time of his death shall receive compensation, and that a wife living with her husband at the time of his death is presumed to be wholly dependent upon her husband for support. It is further provided that no person shall be considered as dependent unless a member of the family of the deceased employe or bears to him the relation of husband or widow, lineal descendant, ancestor, or brother or sister. See Section 35.

We think that under the state of facts existing in this claim, the claimant is entitled to compensation because so far as she was concerned, she sustained the relation of wife to the deceased; and, further, it appears that she was a member of the family of the deceased and was actually supported by him during the period they lived together as husband and wife, so that it does not matter whether we base the award upon the fact that she was the wife of deceased or upon the fact that she comes within the definition of "dependent" on account of being a member of his family. However, we wish to take occasion to remark that had the evidence been such as to indicate that the claimant was the mistress of decedent, we would deem it our duty to deny compensation, although she may, as a matter of fact, have been supported by the deceased.

The average weekly wage of the deceased at the time of his death being $14.58, compensation is awarded in the sum of $9.72 per week to continue for the full period of 312 weeks. A doctor bill of $3 to Dr. Kendig, and funeral expenses to the amount of $150 are also awarded.

RE. CLAIM NO. 59526.

MARY MCCARTHY, ET AL., *Claimants.*

(November 13, 1914.)

A person employed as night foreman was required to report at his place of employment for duty at 5 o'clock p. m. The premises upon which he was employed consisted of several acres of land, the factory building in which the foreman was employed being located near the center of the tract. A cinder roadway led from a public street through the grounds on which the factory building was located to the factory building itself, the roadway being entirely upon the premises of the employer, and being used for both vehicles and pedestrians in traveling from the public street to the factory building.

While going to work, about thirty minutes before time to report for duty, and while traveling along and upon said cinder roadway toward the factory to report for duty, the foreman was run down and killed by an automobile truck owned and operated by the American Express Company.

HELD: That the injury occurred while the foreman was in the course of his employment, and the dependents are entitled to compensation.

STATEMENTS OF FACTS.

One P. McCarthy was on October 7, 1914, an employe of the Allyne-Ryan Foundry Company, of Cleveland. On said day, at 4:30 p. m., while

on his way to work as night foreman, he sustained a fatal injury which resulted in his death several hours later. The deceased was required to report for work at 5 o'clock p. m. and it was while on his way to report that he was struck by an automobile truck owned and operated by the American Express Company. The accident occurred about twenty feet from the public street on which the Allyne-Ryan Foundry Company is located. The property of the foundry comprises several acres of land and is situated on the southwest corner of Aetna Road and East 91st Street. The buildings of the company are situated in the center of this tract of land, and there are no fences around the entire property. From the intersection of Aetna Road and East 91st Street there is a cinder roadway which leads from the said streets to the entrance of the foundry company's factory building. This roadway is about ten feet wide and is used for vehicles and pedestrians in gaining access to the building. The motor truck which struck Mr. McCarthy had left the public highway and was going to the foundry company's plant and it struck McCarthy and injured him just after entering the grounds of the foundry company.

By the Commission: (Opinion by Yaple, Chairman; Hammond and Duffy, Commissioners, concur.)

The important question in this claim is whether the injury sustained by McCarthy, which resulted in his death, was sustained while he was in the course of his employment.

It may be stated, as a general rule, that an employe is not in the course of his employment while he is going to or returning from his work. There are many cases, however, in which it is difficult to draw a line of demarcation and determine just at what moment the period of employment begins or terminates.

Ordinarily, we think that an employe has not entered upon his employment until he has arrived at his place of employment and is upon his employer's premises, although it cannot be said in all cases that he is within the scope or course of his employment while he is on the premises of his employer.

In the claim under consideration the injury happened at about 4:30 o'clock p. m. and the decedent was not required to go to work until 5 o'clock p. m. Had he arrived at the building in which he was to do his work, it is our opinion that there would be no question about the injury occurring while he was in the course of his employment, but he had not yet arrived at the building in which he was to perform his work. He was on his way from the public street to the building and was traveling over his employer's premises, and the premises were a part of the grounds upon which the factory building was located, and from all that appears in the record, the grounds over which decedent was traveling were a part of the premises appurtenant to the building, over which he was required to pass to get to his place of employment.

In the *City of Milwaukee vs. Althoff et al., 145 N. W., 238,* decided by the Supreme Court of Wisconsin on February 3, 1914, it was held that an employe's injury was occasioned while in the course of his employment where he was injured after reporting to his foreman and receiving his instructions for the day, the injury occurring while he was on his way to the place where he was directed to work. In that case the employe was in the service of the City of Milwaukee, under the employment generally

known as "ward laborer"; on the day of his injury he reported for work at the yards of the city, when he was detailed by his foreman to level the crushed rock on a street in said city which was under construction, the same being some distance from the yards; that he proceeded to said street and while crossing another street, he fell by reason of a temporary defective cross-walk and was injured.

The question involved in the claim under consideration has been before the English courts many times, the language of the British Workmen's Compensation Act being quite similar to ours with reference to requiring the injury to be sustained while in the course of employment. Reference to some of the English decisions is here made, from which it will appear that the term "course of employment" is not limited in its meaning to the time occupied in actual work, but extends to all things an employe may reasonably do under his contract of employment.

In the case of *Holness vs. Mackey and Davis, 1 W. C. C., 13,* an employe's place of employment was on one of the upper floors of his employer's factory and he was injured while on the ground floor while on his way to work. It was held that he was entitled to compensation.

In *Holmes vs. Great Northern Railway, 2 W. C. C., 19,* an employe was injured while traveling home by train, the same being provided by his employer as a means of conveyance, and he was held to be entitled to compensation.

In *Pomfret vs. Lancashire and Yorkshire Railway Company, 5 W. C. C., 22,* a fireman on a railroad was injured while traveling home on one of his employer's trains, the rules of the railroad company permitting him to so travel. It was held that he was entitled to compensation.

In *Taylor vs. Jones, 1 B. W. C. C., 3,* a workman who was employed by a farmer in the open field, started to his home upon the approach of a storm and while crossing a plank laid over a dike, fell therefrom and was injured. It was held that he was entitled to compensation.

In *McKee vs. Great Northern Railway Company, 1 B. W. C. C., 165,* an employe was killed while upon his employer's premises while leaving them by an unaccustomed route, but which other men were in the habit of using, to the knowledge of his employer. It was held that his dependents were entitled to compensation.

On the other hand, it was held in *Anderson vs. Fife Coal Company, 3 B. W. C. C.,* 539, that a miner, who was injured on his way to work while he was on his employer's land but had not reached the point at which his duties commenced and the accident occurred twenty minutes before the hour at which work started, was not injured in the course of his employment. In this case the employe's duties were held to have begun when he came to the place upon his employer's premises where it was his business to get a miner's lamp, the lamps being kept at some distance from the entry. After receiving his lamp, he then proceeded into the mine to the place where the actual work was done. His injury was sustained prior to the time of reaching the place where he was to receive his lamp, although he was on his employer's premises at the time he was injured. In deciding the case, the House of Lords made use of the following language:

> "There are only two ways of looking at it. Either you must have a rule that the moment a man enters the premises of his master he is then in the course of his employment; or you must have a rule that he must come to some point at which he enters upon the work which he has to do, and that only then does he begin to be in the course of his employment."

In *Gilmour vs. Dorman, Long and Company, 4 B. W. C. C., 279,* an employe was accustomed to go to his work by a footpath which ran over vacant land belonging to his employer and along a railway line to the factory where he was employed. While on his way to work he was injured by slipping on some ice on some vacant land, a quarter of a mile from the place where he had to work. It was held that he was not in the course of his employment when injured, and that he was not therefore entitled to compensation, Cozens-Hardy, M. R., saying:

> "It seems to me that the circumstance that the property in the vacant land was vested in the employers is irrelevant. Gilmour was not employed on that part of their property. Moreover, he had no right to go, and his employers could not confer upon him any right to go, along the railway line. *Another route existed, by which he had ready access to his work.* I cannot regard the case as in any way different from the case where a man slips on the ice on a public road, a quarter of a mile from his employer's works.
>
> It has been repeatedly held that a man is not entitled to the protection of the act when on his way from his home to the works. There may be some difficulty in ascertaining precisely when a man's employment begins. *Generally speaking, the factory gate or yard indicates the boundary.* Sometimes there may be a sort of excrescence, but I am not prepared to hold that an accident which occurred in a field some quarter of a mile distant, and separated from the premises where the man is to work by land over which he has no right of access, can be deemed to have arisen in the course of his employment."

We believe the language above quoted to be an excellent statement of the law applicable in such cases. We think the rule therein laid down, that the factory gate or yard is usually to be regarded as the line of demarcation, is the proper one. There may be and doubtless are, exceptions to this rule, but if we are to take the position that the employe is entitled to safe ingress and egress to and from his employer's premises, we must consider him in the course of employment after he has arrived at the premises where his work is to be performed.

The only question in the case under consideration is as to whether the vacant grounds surrounding the factory are to be considered premises upon which the employe was employed. It does not appear that the grounds were simply vacant lands adjacent to the factory or that they were being used for purposes having no connection with the work being done in the factory, nor was there any other way for decedent to reach his place of employment except to travel over said grounds, but he was traveling over the way provided for both pedestrians and vehicles when he met with the injury which resulted in his death.

It has been suggested that the owner of the auto truck should be liable for damages and that the state insurance fund to which such decedent's employer has contributed, should not be required to bear the burden, as decedent's injuries were not due to the nature of his employment. In other words, the injury did not "grow out of" the employment. Whether the owner of the auto truck is liable for damages, is a question which it is not our province to determine, nor should we take into consideration the effect that an award of compensation might have upon the right of the personal representative of the deceased to recover damages from the auto truck's owner.

The sole question for us to determine is whether the decedent was in the course of his employment at the time he was run down and killed. We think he was, and compensation is awarded to the claimants at the rate of $12 per week for the full period of 312 weeks, amounting to $3,744.00. An allowance for funeral services is made in the sum of $150.00.

ELIZABETH RESS, ET AL., *Claimants.*
vs.
THE YOUNGSTOWN SHEET & TUBE COMPANY, *Employer.*

(No. 2604, under Section 22 of the Workmen's Compensation Act.)

1. Heat prostration when sustained while in the course of employment is an "injury" within the meaning of the Workmen's Compensation Act.
2. An employe who was an unmarried man maintained a home for himself, his mother, who was 63 years of age, and an unmarried sister 24 years of age. The entire living expenses of the family were met by the earnings of the employe and a pension of $12 per month paid to the mother by the United States Government.

HELD: That the mother and sister were both partially dependent upon the employe for support.

MR. W. A. MALINE, *Attorney for Claimants.*
MR. DUDLEY R. KENNEDY, *Attorney for Employer.*

(November 13, 1914.)

STATEMENT OF FACTS.

The Youngstown Sheet and Tube Company is a corporation carrying its own insurance under the provisions of Section 22 of the Workmen's Compensation Act and paying compensation direct to its injured and the dependents of its killed employes as provided by Section 22 thereof.

On June 3, 1914, Frank Ress was an employe of The Youngstown Sheet and Tube Company and on that date was working in its mills in the city of Youngstown, when he was attacked by heat prostration accompanied by cramps in the muscles of the legs, back and stomach, the effect of which was to cause a weakened heart action, from which he died on June 4, 1914, at 2:15 o'clock p. m. We understand his employment to have been that of "boss-roller" and his average weekly wage at the time of his death was $88.68.

For a year or more prior to his decease, he had maintained a home in the city of Youngstown. His mother, Elizabeth Ress, 63 years of age, and his sister, Florence C. Ress, 24 years of age, lived with him and kept house for him, the family being maintained solely by contributions made by him from his earnings, with the exception of $12 per month which the mother received as a pension from the United States Government, which was used to help maintain the family expenses. Neither his mother nor his sister have ever been wage-earners, his mother's health being rather poor and his sister being partially blind in one eye. Nor had either of them any source of income except from a note of $1,000 which the mother held, the interest of which was devoted to maintaining the household expenses.

BY THE COMMISSION: (Opinion by YAPLE, Chairman; HAMMOND and DUFFY, Commissioners, concur.)

Two questions are presented for our determination in this claim: First, whether the death of decedent resulted from injury sustained while in the

course of his employment; second, as to whether the claimants were dependent upon him for support at the time of his death, and if so, whether they were wholly or partially dependent.

That heat prostration is an "injury" we have no doubt, and we have so held in a number of claims. In fact, this is not seriously controverted by the employer, so that we conclude that the decedent's death was the result of an injury sustained while he was in the course of his employment.

Were the mother and sister, or either of them, dependents within the meaning of the Compensation Act? There is no presumption in favor of their dependency, so that it is incumbent upon them to prove dependeny to the satisfaction of the Commission. Proof has been submitted by the claimants which is substantially the same as appears in the statement of facts appended hereto, and the employer has offered nothing to controvert the proof offered but practically admits that both the mother and sister of the deceased were partially dependent upon him for support at the time of his death.

As we view the matter, the family had two sources of income to maintain it: First, the mother's pension and the small income she had in the way of interest from the $1,000 note which she held; and, second, the earnings of the deceased. The deceased's sister was not a wage-earner and never had been; she owned no property from which she derived an income, so that she was partially dependent upon both her mother and brother.

Our conclusion is, therefore, that the decedent died from an injury received while in the course of his employment, and that he left surviving him his mother and sister, each of whom was partially dependent upon him at the time of his death. We are relieved of the necessity of determining the exact degree of the dependency and the amount of compensation payable to each of the dependents, as counsel representing the parties agree upon compensation for 312 weeks at $11 per week, $6 of which is to be paid to the mother, and $5 per week to her daughter. The apportionment of the compensation as between the mother and the daughter, while not in exact accord with our idea of the division that should be made, is approved.

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Bulletin of

The Industrial Commission of Ohio

"The Evil It Seeks To Remedy Is One That Calls Loudly For Action." —*Chief Justice Fullerton.*

"An Admirable System That Is Doubtless Unsurpassed Anywhere." —*The Late Mayor Gaynor of New York City.*

Vol. I COLUMBUS, OHIO, JUNE 1, 1914 No. 2

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NOTE — This number is devoted entirely to Workmen's Compensation

BULLETIN OF
THE INDUSTRIAL COMMISSION
OF OHIO

FIGURES THAT SPEAK FOR THEMSELVES.

The grand total receipts as of June 1, 1914, were $2,519,723.33. Warrants issued previous to the above date amounted to $643,425.21, leaving a balance of $1,876,298.12 in the state treasury the first of the month.

* * *

Premiums paid into the State Insurance Fund had earned 35,005.94 interest as of June 1. From January 1 to June 1 the interest amounted to $23,706.23. Four and a half per cent interest is being realized on the inactive account, which amounts to $1,617,200.00, while the active account of $263,139.72 is drawing interest at the rate of over 2½ per cent. The Fund is now earning interest at the rate of almost $75,000 per annum.

* * *

On December 31, 1913, 3,937 employers were subscribers to the State Insurance Fund. On June 1, 1914 there were 13,011 subscribers, employing 594,534 employes who represented a payroll of $27,219,663.00. This number does not include the 200,000 employes of 706 employers, who are operating under Sec. 22 of the Compensation Act, and paying compensation direct.

* * *

From March 1, 1912 to December 31, 1913, 16544 accident claims were filed and 13408 of this number were allowed, 938 were disallowed, and 2,198 claims were pending December 31, 1913. Nearly all of the pending claims had been filed only a short time.

* * *

In connection with the 13,408 claims refered to above, awards to the amount of $377,296.79 were allowed.

* * *

For every 100 employes exposed to risk during the year 1913, four accident claims were allowed which involved more than seven days loss of time. In other words, one employe was granted compensation for every 25 exposed to risk.

* * *

The average death benefit in the 38 death claims allowed up to December 31, 1913, was $2,509.89. The average amount for funeral expenses was $136.30. Comparing the amounts of the death claims as allowed by The Industrial Commission with awards allowed in the courts of Cuyahoga County, we find that the former are almost three times larger than the latter.

* * *

One month and 11 days was the average time required by the Commission to settle the death claims that were brought it its attention up to December 31, 1913. Eight months and one day was the average time consumed by the courts in settling 244 similar cases, which came up previous to the enactment of the Workmen's Compensation Law. (a) Twenty-five months was the average time required to settle 36 fatal cases in Common Pleas Court. (a)

a From the report entitled, "The Employers' Liability Commission of Ohio, Employes' Compensation Code ....and report on Fatal Accidents in Cuyahoga County, Ohio, for the period 1905-1910. Page 44.

THE COST OF STATE INSURANCE, AND CIVIL LIABILITY OF EMPLOYERS UNDER THE WORKMEN'S COMPENSATION ACT.

WALLACE D. YAPLE,
Chairman of The Industrial Commission of Ohio.

Two years experience under the elective workmen's compensation act of 1911, and five months experience under the compulsory act of 1913 demonstrates the superiority of the new system of caring for work accidents over the old system of employers' liability laws, with their resulting vexatious and expensive litigation.

The new system is better for the employe because, while the amount of compensation paid is limited and fixed in amount, it is certain and compensation is payable for every injury and for every death where persons are left wholly or partially dependent upon the deceased employe.

It is better for society at large, because under its operation a vast sum of money is saved that was expended under the old system in the way of court costs, jury and witness fees and for caring for those who had been incapacitated on account of injuries and as a result thereof became public charges.

It is better for the employer, because under a workmen's compensation law such as Ohio's the employer knows in advance just what the personal injuries incident to conducting his operations will cost; whereas, under the old system he was often required to submit to vexatious and expensive litigation and while in most instances he escaped paying damages he was frequently mulcted in heavy damages for trivial injuries, so that counting time lost in litigation, attorney's fees, insurance premiums, the amount of judgments paid, etc., the amount paid out each year by employers under the old system vastly exceeded the aggregate amount that will be required to furnish liberal compensation and medical attention for the injured and the dependents of killed employes in our industries.

But aside from the mere money cost being in favor of the new plan it is infinitely superior to the old plan in that under its operations the settlement of disputes growing out of personal injuries is taken entirely out of the realm of private controversy. No longer is the employer arrayed against his injured or the dependents of his killed employes in legal combat, in which the employer is seeking to escape all liability and the employe or his dependents seeking the largest possible judgment that can be obtained, but the employer and his employes have a common interest in seeing that those entitled to compensation receive precisely the amount due them under the provisions of the law, no more and no less.

I shall confine what I have to say in this short article to two questions of special interest to the employer, viz: the cost of workmen's compensation insurance under the Ohio plan, and the civil liability of the employer under the act.

THE COST OF INSURANCE.

The assertion is frequently made, and is calculated to deceive those who have not become thoroughly familiar with the question, that the cost under the new system is greater than under the old, and such statements are usu-

ally made in connection with the question of insurance. It is not my purpose to waste time in making a comparison between state insurance rates now charged employers by The Industrial Commission of Ohio and the rates formerly charged by insurance companies operating in this state for employers' liability insurance, because the two are entirely different from each other, having nothing in common, workmen's compensation insurance providing compensation and medical expenses for every injury and death, and employers' liability insurance providing for no compensation and as a rule for no medical attention, except such as the insurer may be forced to give.

But it is proper to discuss the question as to whether insurance companies should be permitted to operate under a compensation law, as Ohio's compensation law is so drawn as to give the state a virtual monopoly of furnishing workmen's compensation insurance, while many other states still permit such companies to engage in the so-called "business" of writing workmen's compensation insurance policies. My opinion about the matter is, and always has been, that private interests should not be permitted to come between the employer and the injured employe and conduct a business for profit which profit must come from the misery and distress of human beings. It is not a legitimate business, never has been and can never be made such. It would not be considered a legitimate business proposition for private corporations to engage in the business of policing our cities and making prosecutions for the violation of laws. That is a matter that is very properly considered one of the functions of government; so is the maintenance of a free public school system, and I maintain that the administration of the compensation act by which the injuries of employes of our state are cared for is as much a function of government as the policing of our cities or the conduct of our free public schools. This is especially true under the provisions of our new constitution which specifically authorizes the state to maintain a state insurance fund for the benefit of injured and the dependents of killed employes. If, then, the administration of such a law is a function of government, it cannot be considered a legitimate field for business. If, on the other hand, it is not a function of government, it is not a legitimate field for business and the state is not justified in even entering it.

It has been urged by many that there should be "competition" in the business of furnishing workmen's compensation insurance and that the state is not justified in creating a monopoly for itself, but, in answer to this, I claim, first, as before stated, that it is not a "business" but a governmental function; and, second, that even granting that it is a legitimate field for business, the state has not made a business proposition of it. It is simply acting as the administering agent of a fund made up from contributions from all the employers of the state; for the state seeks to make no profit but pays out of its treasury in the form of compensation every penny that is paid into the treasury by employers, taking nothing from the fund for administrative purposes.

But, it is said that it is unjust to the general tax payer who is not an employer to help maintain an organization for the administration of a fund in which only employers and employes are interested. That objection is disposed of by the fact that the state makes no general tax levy upon the property of the people for its maintenance, but all of its departments are wholly maintained by corporation and excise taxes and the fees pertaining to the several departments of government. Not a dollar of the money appropriated by the state to defray the expenses of administering the compensation fund is levied upon the real and personal property of the

farmer, the merchant or the manufacturer.

But, if we concede that insurance companies should be permitted to engage in the business of writing so-called workmen's compensation insurance, then it is proper to ascertain what such companies are charging employers for such insurance in the states in which they are permitted to operate and in which no provision has been made for the maintenance of a state fund, and compare their rates with the rates being charged by The Industrial Commission of Ohio, in order to ascertain whether as a matter of fact the employers would derive any benefit if the insurance companies were allowed to enter the field and compete with the state.

A very interesting comparison is made in a publication made by the Federal Government, the same being Senate Document No. 336, 63rd Congress, 2nd Session, a review of the compensation laws of all the states being made therein, a comparison of premium rates made and a table given showing the state rates prevailing in Ohio, and the insurance company rates prevailing in Illinois, Wisconsin and other states, the comparative table showing that the state insurance rates are in every instance far below the rates charged by stock companies.

We hear much of the progressive legislation of Wisconsin and it is true that Wisconsin is far ahead of many of the states in humanitarian legislation; and recently we have heard much about Michigan's model compensation law which gives the employer four options, viz: state insurance, self insurance, company insurance and mutual insurance.

I have had a table prepared showing the state rates charged by The Industrial Commission of Ohio and the stock company rates charged in Michigan and Wisconsin for compensation insurance and the result shows that Michigan rates are 3.28 times as high and the Wisconsin rates 3.7 times as high as the Ohio rates. The table is as follows:

Representative Employments.	*Ohio State Insurance Pref'd Rate.*	*Michigan Compensation Rate.*	*Wisconsin Compensation Rate.*
Confectionery Mfrs.	$0.45	$1.10	$1.65
Acid Mfrs.	.77	3.30	3.50
Car Mfrs. (R. R.)	1.30	3.58	4.25
Coal Mines	1.50	11.00	8.25
Carpenter Contractors	2.03	3.50	4.62
Mason Contractors	2.70	5.00	6.47
Electric Light & Power Cos.	3.10	6.60	7.28
Harness and Saddle Mfrs.	.50	1.38	1.60
Saw Mills	1.31	4.95	5.05
Planing Mill and Lumber Yard	.95	3.58	3.59
Meat Packing and Stock Yards	.81	2.75	3.38
Machine Shops	.63	1.65	1.90
Machine Shop with Foundry	.72	2.48	2.37
Foundry (Iron)	.95	2.75	3.85
Boilermakers	1.49	3.85	4.29
Flour Mills	.72	2.20	3.20
Mining (except coal)	1.35	6.60	8.25
Ice — artificial mfrs.	.72	2.75	3.79
Street Ry. Co.—			
(a) Electric, Interurban	1.80	11.00	14.57
(b) Electric, not Interurban	1.26	7.43	4.41
Oil (fish, lard, tallow, etc.)	.55	2.48	2.77
Blast Furnaces	1.80	6.60	9.48
Iron Smelters	1.80	6.60	9.48
Paper Mfrs. (no saw or bark mills)	1.15	2.90	2.89
Cardboard Mfrs. (no pulp mill)	.85	2.35	2.62
Writing Papers Mfrs.	.90	1.30	1.20
Glass Mfrs. (no plate or window glass)	.27	1.38	.92

Representative Employments.	*Ohio State Insurance Pref'd Rate.*	*Michigan Compensation Rate.*	*Wisconsin Compensation Rate.*
Printers	.20	1.10	.92
Rubber Goods Mfrs.	.59	2.48	2.37
Freight Handlers — Stevedores	1.44	6.50	7.77
Lime Quarries — blasting and crushing	2.30	6.60	7.55
Cement Mfrs. — no quarry	2.03	4.40	5.30
Clothing Mfrs.	.18	.66	.55
Mattress Mfrs. — no spring or wire work.	.27	1.48	1.48
Tobacco Mfrs. (chewing, smoking, etc.).	.32	.83	.67
Great Lake Steamers	1.13	4.00	3.35
Scrap Iron Dealers (shop and yard)	2.55	6.60	11.10
Storage (cold storage)	1.22	2.20	2.30
Furniture Mfrs.	.68	1.98	2.37
Wood Turners	.68	2.20	2.84
Totals	$46.06	$151.09	$164.75
	1	3.28	3.7

The foregoing table was prepared by Mr. Emile E. Watson, Chief of our actuarial department.

But those in favor of allowing the insurance companies to compete with the state have said from the beginning, and still say, that the state cannot maintain its present low rates. Insurance men are loud in their claims that our rates are not on a scientific basis, that we have not had experience sufficient to determine what proper rates should be, and that a rise in our rates is inevitable. We admit that our rates were experimental in the beginning and necessarily so because nowhere in the world could there be had any accurate and reliable information upon which to base our rates. No insurance company in this country possessed such information and the rates fixed by the insurance companies in states in which they are permitted to operate were not scientifically constructed on accurate data but were experimental. Of course, accurate information on the subject was obtainable from the experience in the German Empire, but conditions surrounding our operations are so different from those in Germany that the German experience could not be safely relied upon. But "the proof of the pudding is in the eating thereof." Not only have we been able to pay compensation out of our state insurance fund in its full measure as the law requires, but we have also been able to make two reductions in the rates which we established in the beginning, and our financial statement of May 1st, which has just been completed, shows that all of our losses are being taken care of on less than 85% of our earned premiums, which fact presages a further reduction in the rates charged in many occupations.

CIVIL LIABILITY OF EMPLOYERS.

Mention is here made of the civil liability of employers only for the reason that from the time the first workmen's compensation act went into effect insurance companies engaged in writing employers' liability insurance, and their agents were loud in their claims that employers would frequently be called upon to respond in damages and that the payment of premiums into the state insurance fund gave them no real protection from litigation. The writer was confident from the first that few civil actions would be brought against employers and experience has demonstarted that the number of instances in which resort has been had to actions for damages in the courts are negligible. In fact, only two judgments against employers who have subscribed to the state insurance fund have been rendered since the going into effect of the elective act of 1911, one of which has since been reversed and the suit in which the other was

rendered is now pending in the higher courts.

Civil Liability of Employers under the compensation act should be considered under three heads:

1st. As to employers employing fewer than five employes.

2nd. As to employers employing five or more employes who have contributed to the state insurance fund or who have elected to carry their own risks under the provisions of Section 22 of the Act of 1913.

3rd. As to employers who employ five or more employes and who have not either contributed to the state insurance fund or elected to carry their own risks under the provisions of Section 22 of the Act of 1913.

As to employers employing fewer than five employes, it is sufficient to say that the compensation law in no wise changes the rules of liability that prevailed prior to its enactment, unless under the optional provisions found in Section 24 of the Act of 1913, the employer elects to contribute to the state insurance fund, in which event his civil liability is the same as in the case of employers employing more than five employes.

Employers employing more than five employes who pay their premiums into the state insurance fund are not liable to respond in damages on account of injury or death of any of their employes, unless such injury or death was occasioned by the "wilful act" of the employer or any of such employer's officers or agents, or from the failure of such employer or any of his officers or agents to comply with lawful requirements for the safety of employes. (Section 20-1 and 21-2 of the Act of 1911 and Sections 23 and 29 of the Act of 1913). In other words, the right to maintain a civil action on account of injury or death resulting from mere negligence is taken away from the employe or his personal representative and in lieu thereof he, or his dependents in case death ensues, is given the right to receive certain and definite compensation out of the state insurance fund.

Considerable difference in opinion has existed as to the meaning of the phrase "wilful act" as it appears in Section 21-2 of the act of 1911 and in Section 29 of the act of 1913, but owing to the very small number of actions prosecuted under favor of these sections the meaning of the phrase has never been finally determined judicially, although in a charge to the jury in a case pending in the United States District Court for the Northern District of Ohio, the trial judge construed it to mean "wantonness" or "wilful negligence." *McWeeny vs. The Standard Boiler & Plate Co.,* reported in the Ohio Law Reporter of February 16th, 1914. In my opinion, the definition of "wilful act" given by the trial judge in that case was incorrect. In volume 8 of the "Commentaries on the Law of Negligence," which has just come from the press, it is said in Section 22:

"A distinction is made between wilful and wanton acts. *A wilful act is done knowingly and purposely with the direct object in view of injuring another.* A wanton act occurs where there is a careless indifference or disregard of the natural consequences of doing or omitting to do an act."

However, the question as to the proper construction of the phrase is no longer important, as the General Assembly, at the special session recently held, amended Section 29 of the Act of 1913 by inserting therein a definition of the phrase, the following language being used:

"The term 'wilful act,' as employed in this section, shall be construed to mean an act done knowingly and purposely with the direct object of injuring another."

No judicial construction has yet been placed upon the expression "lawful requirement for the protection of the lives and safety of employes" as contained in Section 29 of the Act of 1913, but I think the expression is broad enough to include all of the statutes enacted for the safety of persons and such general orders as

may be lawfully adopted and promulgated by The Industrial Commission of Ohio.

Section 29 of the Act of 1913 provides that in all civil actions brought under its favor the defendant shall be entitled to plead the defenses of contributory negligence and the fellow servant rule; and, that, in the event judgment is awarded the plaintiff, the court shall determine the amount of fees to be paid counsel for plaintiff, any contract to the contrary notwithstanding. Section 21-2 of the act of 1911 contained neither of these provisions nor did it define the term "wilful act."

As Section 29 now stands, with the common law defenses restored, and with the phrase "wilful act" defined to mean "an act done knowingly and purposely with the direct object of injuring another," a civil action for damages is a very unattractive proceeding for an injured employe who can apply for compensation and receive the same promptly and with little or no expense to himself, especially when it is considered that by instituting a civil action he forever closes the door to compensation. As a matter of fact, I have knowledge of but twelve civil actions brought under favor of this section, while about 40,000 claims for compensation have been filed with the Commission.

The Civil liability of employers who employ five or more employes, and who neither contribute to the state insurance fund nor elect to carry their own risks under the provisions of section 22, is defined in Section 26 of the Act which provides that such employers:

> "Shall be liable to their employes for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employes, and also to the personal representatives of such employes where death results from such injuries, and in such actions the defendant shall not avail himself or itself of the following common law defenses: the defense of the fellow servant rule, the defense of the assumption of risk, or the defense of contributory negligence."

The Act of 1911 contained a similar provision removing all of the common law defenses.

It will be observed that there is no liability under this section unless there is some fault or negligence on the part of the employer, his officer, agent, or employe. In other words, it is not attempted, by this section, to create a liability without fault. But once fault is established a *prima facia* case is made which cannot be defeated by setting up any of the common law defenses.

The constitutionality of section 21-1 of the Act of 1911 was sustained by the Supreme Court of Ohio in *The Jeffries Manufacturing Co. vs. Blagg,* decided April 28, 1914, the journal entry reciting:

> "This Court finds that the act of the General Assembly of the State of Ohio, passed May 31, 1911 * * * entitled 'An Act to create a state insurance fund for the benefit of injured and the dependents of killed employes * * * ' and particularly Section 21-1 of said Act (102 O. L., 524) are valid and are not in violation of, or repugnant to the provisions of Section 1 of the 14th Amendment to the Constitution of the United States."

The case of *Sumkehr vs. Diamond Portland Cement Co.,* 14 N. P., N. S. 166, is to the same effect.

Whether under the provisions of Section 26 a defaulting employer is liable to respond in damages for *any* negligence *however slight* is a mooted question. In *Schaeffer vs. Cincinnati Bickford Tool Co.,* 13, N. P., N. S. 553, decided by Judge Pugh, of the Superior Court of Cincinnati, it was held that the test of liability under Section 21-1 of the Act of 1911 was not whether the employer exercised *ordinary care* but whether he was guilty of *any* wrongful act, neglect or default which caused the injury.

In *Gerthung vs. The Stambaugh-Thompson Co.,* 18 C. C., E. S., 329, decided by the Court of Appeals of

Mahoning County, on December 8, 1913, it was held that the test of liability under this section is whether the employer exercised the degree of care that ordinarily prudent persons are accustomed to exercise under the same or similar circumstances.

Whether the defaulting employer is liable under this section for *any* negligence *however slight* on the part of himself, his officer, his agent or or his employe, or whether it is his duty, and the duty of his officers, agents and employes, to exercise only that degree of care that the ordinarily prudent person would exercise under the same or similar circumstances, he is in either event deprived of the common law defenses of contributory negligence, assumption of risk and the fellow servant rule.

In view of the exceedingly small number of civil actions that have been brought under favor of the workmen's compensation act, and the fact that no actual recoveries have as yet been made in any suits that have been filed, it is reasonable to conclude, especially since the amendment of Section 29 defining the term "wilful act" as used in that section, that compensation will henceforth be the exclusive remedy for industrial accidents, and that the courts of Ohio will no longer be called upon to consider questions involved in such proceedings.

HOW TO PROVE CLAIMS FOR AWARDS FROM THE STATE INSURANCE DEPARTMENT.

H. H. Hamm, *Director,*
Department of Claims.

Ordinarily, only three persons are involved in the proving of claims for awards from the State Insurance Fund,—the injured employe, the attending physician and the employer.

A few suggestions with respect to the procedure to be followed by each of these persons may be of assistance and benefit to those interested in this matter:

1. THE INJURED EMPLOYE.

Employes who desire to file claim for awards from the State Insurance Fund will facilitate the handling of their claims by observing the following suggestions:

Obtain from your employer a blank form of preliminary application, (employers are required to keep a supply of this form on hand at all times.) See that the blank form is filled out and mailed immediately to "The Industrial Commission of Ohio, Department of Claims, Columbus, Ohio."

You will receive by return mail, a blank form of supplemental application, containing the claim number assigned to your claim. Remember that your claim cannot be passed on by the Commission until this is properly filled out by you and filed with the Department of Claims.

Remember also that your claim cannot be heard until your physician has filled out and filed with the Commission, his report.

Before inquiring of the Claims Department as to why your claim has not been heard, be sure that your claim has been completed by the filing of the above mentioned reports.

2. THE ATTENDING PHYSICIAN.

Upon receipt by the Claims Department of report of an injury, made out on the blank form furnished by the Department for this purpose,

two blank report forms, containing the claim number assigned to the case, are immediately mailed to the physician named thereon. These reports are the Attending Physician's Report and the Fee Bill.

The Attending Physician's Report should be filled out and returned at once to—"The Industrial Commission of Ohio, Department of Claims, Columbus, Ohio." The Fee Bill may be held until completion of treatment.

No medical report blanks are furnished, except in cases where proper report has been made to the Department of Claims, by the injured employe, or his employer.

If the physician will fill out the Attending Physician's Report so as to show the complete facts as to the nature and extent of the injury, and return to the Department of Claims immediately, it will eliminate, to a large extent, the delay in proving the claim and will secure for the injured employe an early hearing of his claim.

3. THE EMPLOYER.

Each employer is furnished with a supply of Preliminary Applications to be used in filing with the Department of Claims preliminary reports of injuries. When an employe is injured, it is made the duty of the employer, under the Rules of the Commission, to see that the injured employe is furnished with a preliminary application blank, so that proper steps may be taken by the employe to file his claim for an award with the Commission.

The form of Supplemental Application furnished to the employe, as shown above, contains at the bottom thereof, a certificate to be filled out by the employer, certifying as to the correctness of the statements contained in the application.

In this connection, it is suggested that employers inform themselves fully with respect to the facts in connection with each case of injury sustained by their employes to the end that the employer may be able to verify the statements made in applications filed by their employes, and furnish any additional information which may be required by the Commission in considering claims.

THE PREPARATION OF PAY-ROLL REPORTS.

J. J. HIGGINS,
Chief of the Auditing Department.

The receipt of inquiries from many employers, requesting information regarding the renewal of their insurance has prompted the following explanation and suggestions:

Since the adjustment of insurance at the end of each six-month period is made on the basis of the actual expenditure during that period, it is necessary that the employer furnish The Industrial Commission a report of his pay-roll. To facilitate the making of this report, the commission furnishes blanks on which the employer enters his wage expenditure according to pay-days. On receipt of this report, the actual earned premium is figured, and the employer is either charged an additional amount, if his actual pay-roll is in excess of his estimate, or given a credit if it is less.

Also, notice is given the employer of the advance premium necessary to keep his insurance in full force and effect for the next period. At certain intervals an auditor will call on the employer and examine his records of wage expenditure for the purpose of verifying the report which has been submitted.

That the preparation and auditing of pay-rolls may be made as easy as possible, it is suggested that the employers become familiar with the class or classes to which their risk has been assigned, and so arrange their pay-roll records that a report of the wages expended can be readily made. Spec-

ial care should be taken in instances where the risk is carried in more than one class that the pay-roll record is so kept that a report can be made of the expenditure in each class.

Employers should bear in mind that, under the system of rating devised by the commission, your own experience influences your rate. By so arranging your pay-roll records that an accurate accounting can be made of the wages expended in each class, the commission will be able to properly determine the hazard of each class rather than of the entire industry. This will eventually benefit the employer as he will be able to determine wherein his hazard benefit the employer as he will be able to determine wherein his hazard lies and take steps to lesson same, this insuring a reduction in rate.

It will be the constant aim of this Department, to simplify, as much as possible, the reports required of the employer, and we will welcome any suggestions tending to facilitate and better the service.

WHY A MEDICAL DIVISION.

Dr. A. W. Binckley,
Chief Medical Examiner.

One of the most important duties imposed upon this Department by the Commission is to be of aid in determining medical facts and in approving the proper medical aid and the fee bills rendered for such aid.

The rate of compensation and amounts for specified disabilities are fixed by statute but in the majority of cases, it is necessary that it be determined from a medical standpoint, as to the *exact nature and extent of the injury, with the resultant proper disability.*. The Commission looks to its medical division for the proper consideration of these medical facts.

This Department consists of three physicians and the chief medical examiner at the home office, a local medical examiner for each and every county and a special eye and X-Ray examiner for special districts in the state. This Department is well equipped and ready to aid in the proper determination of medical facts. It is easily appreciated that there is, and always will be, a certain number of cases in which the determination of medical facts must necessarily be delayed. These cases are very few in proportion to the number filed. The delay in handling a case, in such cases that are delayed, is due, as a rule, to causes which are avoidable, and inasmuch as delay is a thing to be avoided, we will classify the causes of delay as follows:

1. Causes which delay the hearing of a claim and which are avoidable.
2. Causes which delay the hearing of a claim and which are unavoidable.

CAUSES WHICH DELAY THE HEARING OF A CLAIM AND WHICH ARE AVOIDABLE.

Too much attention cannot be given to this subject. When a case is completed it can be assembled in the claims department, considered as to medical facts and fees by the Medical Division, examined by the claim examiner who computes the compensation, be presented, considered and decided by the Commission in *not to exceed a greater period of time than two days.*. This is being done with more than 200 cases per day, and the method of handling cases is so systematized that our capacity cannot be

exceeded by the number of accidents which occur in this state.

A claim is composed, as a rule, of three component parts. First, the preliminary application, which must be sent in within a week of the date of the injury. Second, an attending physician's report and fee bill, which is sent to the physician on the same day that the notice of injury is received, with the request that the report be returned at once and the fee bill returned when the treatment is completed. Third, of a supplemental application blank, which is sent to the injured employee on the same day on which we receive the first notice of injury report. This blank is not difficult to fill out and is to be signed by the injured employee and certified to by his employer. This system is simple, and therefore not complicated. Why, therefore, the delay in these cases that are delayed? *In practically all of the cases, the answer is that there has been either a failure to promptly send in these report blanks which must comprise a claim, or, if sent in, they are not properly filled out.* Note that there are three parties interested, the employer, the employee and the physician. The delay in the claim is therefore due to failure on the part of one or more of the three parties interested.

Further explaining the case of delay, let us take up the three component parts of the claim and note what happens when either of the parts is not promptly sent in.

First—Preliminary Application.

Failure to send in the preliminary application by the employee within a week of the date of the injury, makes the employee liable not to receive compensation for his injury, if the injury incapacitates him for more than a week. If it lasts less than a week, the injured man is not affected but his attending physician's fee bills are not paid until three months after the date of injury. Failure in this regard causes many hundreds of letters to be written by employees, asking in regards to their compensation, or by physicians asking in regards to whether or not they are to receive blanks or why they have not received them, or why they cannot receive compensation for the medical services rendered in the case. If the preliminary application report is not properly filled out, it necessitates its return, or when the injury is not clearly defined on the notice, it necessitates a local medical examination. If this report is not promptly filed and is delayed, it makes medical facts hard and sometimes almost impossible to be obtained and determined. We appreciate, from reports of many physicians that employers and employees are "taking chances in not reporting their minor injuries." This is being gradually corrected for the reason that the physicians do not expect to stand the loss of payment for medical treatment in a case, simply because the injury is not reported and are now notifying us of treatment rendered to injured employees for which they have not received their report blanks. This condition is further being corrected, for the reason that many of these trivial injuries do not always remain trivial, especially if 'blood poisoning' occurs. The employer and employee cannot afford to take chances on this kind of cases.

Second—The report of the physician.

Failure to send this report in promptly is the very frequent cause of delay in a claim and the consequent withholding from the injured man of compensation which he is depending on during the period of his disability. Failure in this respect necessitates that we again write to the physician for the report, or if we are unable to obtain it in this way, to then notify the injured man, or the employer, as to the cause of delay in the case. Failure in this regard, further makes it difficult to obtain a clear idea of the medical facts, or if the physician's report is not clearly reported or is incorrectly stated, or the diagram on

the back of the report, on which must be indicated the loss of certain parts of the body, or injuries to these parts, is not clearly marked and described, it delays the determining of medical facts.

Third—The supplemental application blank.

If the injury lasts more than a week, and the injured employee fails to send in this supplemental application, the man receives no compensation. Failure to send in this blank promptly, seems to be due to the fact that the injured employee thinks that if he "signs up" this blank, it closes his case. *The fact that the injured employee signs this blank does not close his case but opens it, so that compensation can be started. The case is not closed until the disability ceases and if it is closed at the time that the disability is considered to have ceased, the Commission can RE-OPEN THE CASE, UPON PRESENTATION OF FURTHER FACTS.*

The injured employee does injustice to himself in many of these cases by not thoroughly understanding this fact. In many other cases we find that the injured employee does not file this supplemental application blank because his injury does not cause a disability of more than a week, and there is no compensation due him. But, it is important that this blank be filled out for the injury, even if it lasts less than a week, in order that the Commission is enabled to promptly consider the physician's fees in the case. Failure in this regard also causes a great amount of unnecessary correspondence, particularly from the physician. The Commission has adopted a rule to take care of these cases, in which the employee does not file his final application and the disability lasts less than a week, so that the physician's fee bill can be paid in each and every case. But this delay can easily be obviated by the prompt filing of the application in injuries lasting less than a week.

The above enumerated causes of delay are those that certainly can be called "unnecessary causes." They can be reduced to a minimum and cause no hardship to any one concerned, if given attention.

UNAVOIDABLE CAUSES OF DELAY IN THE HANDLING OF CLAIMS.

These cases are very few in proportion and may be classified, briefly, as follows:

First:—Permanent partial disabilities of a severe nature, such as a permanent partial or total loss of sight of an eye, partial or total loss of, or loss of use of, finger or fingers, hand, arm, foot, or leg, and for which the exact disability cannot be immediately determined. In these cases the Commission requires its medical division to estimate a period over which compensation, as temporary total disability, can be justly and safely considered, until the exact permanent disability present can be determined. It is appreciated that it would not be just to consider these important cases in any other way.

Second:—A small number of death claims in which medical facts or the exact causes of death are not clearly shown. These cases necessitate the obtaining and determining of the exact causes and medical facts.

Third:—Long continued temporary total disabilities of a severe nature, in which further examination must be made to determine the actuality of continued disability.

Fourth—Cases of exaggeration, malingering, etc.

Another important duty, imposed on this Department by the Commission is the consideration of medical fees to be paid from the state insurance fund, which is composed of employers' premiums. The Commission realizes that this question is of vast importance and it is made the duty

of this Department to approve, after a full consideration of medical facts presented or obtained, the proper medical fees. The nature and extent of the injury, and unusual or exceptional treatment enter into the consideration of the fee bill. It is, and always will be necessary to maintain a uniformity as to charges for treatment of the same kind of injuries. It is further necessary to consider each case in connection with medical facts as presented and absolutely impartially. It is needless to state that we cannot consider any one surgeon's services to be of more value than another surgeon's services and for the treatment of the same kind of an injury. It is further needless to assert that all fee bills cannot be approved as rendered.

The Commission recognizes the fact that the injured employee has a certain right as to preference in the selection of his attending physician. If the injured man does not exercise and insist on this right, then it is most certainly the right and the duty of the employer to provide the best surgical attention possible for his injured employees. This Department finds that this principle is generally adhered to by employers and we believe it to be the right one, inasmuch as it gives an equal opportunity to all physicians in the treatment of industrial accidents. The physician best qualified in this work will advance himself, the one least qualified will eliminate himself, this for the reason that the employer *must of necessity observe the medical aid, owing to the effect that it will have on his premium,* and the employee will observe the effect of the treatment given and the disability that is obtained.

We believe a strict adherence to this principle will make for good surgical attention in the future in the treatment of industrial accidents. We further find that employers, employees and every one concerned appreciates that the physician's services in the treatment of an industrial accident is of the greatest importance and of great value and that the best treatment is the most economical in the long run.

This Department has given conscientious consideration to each and every case filed, and owing to the fact that each case is given thorough consideration from the time that the first notice of injury report is filed to the time that the case is finally disposed of by the Commission, our medical average paid per case, including hospital and nursing attention, is $9.00, while the closest average of any workmen's compensation Act which we can find is fifty per cent less and for the same kind of services. This high average is maintained in spite of the fact that the employers' premiums are less for workmen's compensation insurance and the benefits to the injured man higher, than the majority of other acts.

Other questions of great interest to employers, employees and physicians, and which are of a medical nature, will be taken up in the future and are as follows:

1. The subject of malingering and exaggeration, how detected and prevented.

2. The necessity for a medical division, to be independent and not in the same relation to the injured man as the attending physician whose rendering of facts and unbiased judgment is often difficult owing to his dependency, to such community for his clientele. This necessity is further shown when it comes to determining the real medical facts which are often confusing, owing to the misrepresentation of such facts in different ways and for different purposes, with the idea of beclouding the real facts.

3. What difficulties arise in special examinations and what are the causes of such difficulties. What the subject first aid, infection, hernia and grave disabilities really mean to employers and employees.

ANNUAL STATISTICAL REPORT.

The Department of Investigation and Statistics of the Industrial Commission will shortly mail to all insured firms, who have not already reported, a form designated as Form B, which calls for a statistical report concerning hours and wages of employees, and certain other data for the year 1913. This report is called for under Paragraph 10 of Section 22, of the act establishing the Industrial Commission of Ohio, and replaces the annual "Industrial and Wage Shedule" heretofore called for by the Commissioner of Labor Statistics.

It has been the purpose of the Department to simplify, as far as possible, the work required in filling out this form. To this end a statement of classified wages is called for, replacing the statement of average wages by occupations required in previous years. The information required as to the number of stockholders and capital invested is the same as that called for by the United States Census of Manufactures, and by Massachusetts and New Jersey. The advantage of uniformity with the United States Bureau of the Census in this matter is obvious, as it will render Ohio industrial statistics comparable with those of other states. The information furnished by each firm is confidential, being published only in combination with the data from other firms in the same industry.

Any inquiries with regard to the method of making the report will receive immediate attention, if addressed to the Department of Investigation and Statistics. The work of the Department will be facilitated, if Form B is made out and returned as promptly as is consistent with accuracy.

FINANCIAL STATE

EMILE E. WAT

It is with considerable pride that we present the present condition

Schedules.	Gross Earned Premium Versus Loss Cost.			
	Full Earned Premium.	Total Losses.	Gross Surplus.	Loss Ratio in Percent.
1. Bakers	$12,769 15	$7,831 60	$4,937 55	61.4%
2. Chemical (drug and paint)	11,687 50	3,742 43	7,945 07	32%
3. Coach, Car and Wagon	47,996 23	33,924 03	14,072 20	70.7%
4. Coal Mines	128,922 17	125,360 41	3,561 76	97.2%
5. Contractors	182,659 54	111,044 06	71,615 48	60.8%
6. Electric	25,503 46	23,860 18	1,643 28	93.6%
7. Leather	24,659 15	8,476 76	16,182 39	34.4%
8. Lumber	54,766 16	37,757 36	17,008 80	68.9%
9. Meat	8,680 18	2,997 69	5,682 49	34.5%
10. Metal	607,323 97	432,598 35	174,725 62	71.2%
11. Milling	8,044 05	8,822 28	778 23	109.7%
12. Mining	3,054 89	409 20	2,645 69	13.4%
13. Miscellaneous	116,676 86	105,193 95	11,482 91	90.1%
14. Oils	18,346 39	17,257 10	1,089 29	94.1%
15. Ore and Blast Furnace	67,167 12	59,138 96	8,028 16	88.1%
16. Paper	47,498 04	48,564 51	1,066 47	102.2%
17. Pottery — Glass	64,873 40	58,060 33	6,813 07	89.5%
18. Printing	17,085 17	12,149 55	4,935 62	71.1%
19. Rubber	22,486 09	15,476 37	7,009 72	68.8%
20. Stevedore	3,312 26	6,051 54	2,739 28	182.7%
21. Stone	37,264 90	26,853 65	10,411 25	72.6%
22. Textile	22,770 20	8,414 30	14,355 90	36.9%
23. Tobacco	4,905 40	791 68	4,113 72	16.2%
24. Vessel	1,414 00	167 28	1,246 72	11.8%
25. Warehouse	58,410 24	33,479 38	24,930 86	57.3%
26. Wood	45,779 40	30,082 12	15,697 28	65.1%
Totals	$1,644,055 92	$1,218,505 07	$425,550 85	74.1%

Total premium recepits, $2,337,276.51.

A few comments will serve to make the full significance of this statement quickly understood.

As of May 1, 1914, the employers of Ohio have paid into the state insurance fund $2,337,276.51, of which amount $1,644,055.92 has been earned. By this is meant—assume that an employer took out his insurance with the state as of April 1, 1914 and that his six-month's premium were $600.00. As of May 1, 1914, (one month's period of time) one-sixth of $600.00 or $100.00 would have been earned.

The total losses as of May 1, 1914, were $1,218,505.07. This represents all injuries occurring prior to May 1, 1914, settled and unsettled, an estimate of cost having been made on all the unsettled claims.

Deducting the total losses from the total earned premium, therefore leaves a gross surplus of $425,550.85

MENT, MAY 1, 1914.

SON, Actuary.

of the Ohio state insurance fund, tabulated by classes of industries:

Net Earned Premium Versus Loss Cost.

Full Earned Premium.	Less Reserve.	Net Earned Premium.	Total Losses.	Net Surplus.	Loss Ratio in Percent.
$12,769 15	$1,344 00	$11,425 15	$7,831 60	$3,593 55	68.6%
11,687 50	1,176 00	10,511 50	3,742 43	6,769 07	35.6%
47,996 23	4,872 00	43,124 23	33,924 03	9,200.20	78.7%
128,922 17	14,280 00	114,642 17	125,360 41	10,718 24	109.4%
182,659 54	18,648 00	164,011 54	111,044 06	52,967 48	67.7%
25,503 46	2,688 00	22,815 46	23,860 18	1,044 72	104.6%
24,659 15	2,520 00	22,139 15	8,476 76	13,662 39	38.3%
54,766.16	5,544 00	49,222 16	37,757 36	11,464 80	76.7%
8,680 18	840 00	7,840 18	2,997 69	4,842 49	38.2%
607,323 97	61,824 00	545,499 97	432,598 35	112,901 62	79.3%
8,044 05	840 00	7,204 05	8,822 28	1,618 23	122.5%
3,054 89	336 00	2,718 89	409 20	2,309 69	15%
116,676 86	11,928 00	104,748 86	105,193 95	445 09	100.4%
18,346 39	1,848 00	16,498 39	17,257 10	758 71	104.6%
67,167 12	6,888 00	60,279 12	59,138 96	1,140 16	98.1%
47,498 04	4,872 00	42,626 04	48,564 51	5,938 47	113.9%
64,873 40	6,384 00	58,489 40	58,060 33	429 07	99.3%
17,085 17	1,680 00	15,405 17	12,149 55	3,255 62	78.1%
22,486 09	2,016 00	20,470 09	15,476 37	4,993 72	75.6%
3,312 26	336 00	2,976 26	6,051 54	3,075 28	203.4%
37,264 90	3,696 00	33,568 90	26,853 65	6,715 25	80%
22,770 20	2,352 00	20,418 20	8,414 30	12,003 90	41.2%
4,905 40	504 00	4,401 40	791 68	3,609 72	17.9%
1,414 00	168 00	1,246 00	167 28	1,078 72	13.4%
58,410 24	5,880 00	52,530 24	33,479 38	19,050 86	63.7%
45,779 40	4,536 00	41,243 40	30,082 12	11,161 28	72.9%
$1,644,055 92	$168,000 00	$1,476,055 92	$1,218,505 07	$257,550 85	82.5%

—meaning that the Industrial Commission has paid out 74 1-10 cents on the dollar.

By the requirements of the law $168,000.00 is set aside as a surplus fund to take care of possible calamities, such as occurred in a recent West Virginia coal mine disaster; the shirt waist factory in New York City; or any acts of God, etc., thereby leaving a net surplus of $257,550.85. This means, in other words, that it has required 82½ cents on the dollar to provide for the total losses plus the surplus factor.

The Industrial Commission is desirous of eliminating the net surplus above referred to as is the employer to have it eliminated, not merely from the stand-point of equity, but because it operates as a direct expense burden on both the Auditing and Actuarial Departments.

It is the primary concern of the Commission, however, not to reduce the rates so low as would require rais-

ing them at a subsequent date, believing this would not only develop a condition that would engender great dissatisfaction among the employers, but that it would also tend to demoralize the state insurance plan.

It is pertinent at this point to refer to the action of the Commission as of July 1, 1913, wherein it declared a retroactive rating which returned to the employers who were contributors to the fund as of that date approximately $70,000.00 in the form of Credit Premiums.

By scanning column number 10 of the above statement, it will be observed that the losses of seven classes exceed 100 per cent of the premium. The total deficit of these seven classes however, aggregates but $23,598.74.

The fundamental point in connection with this statement is the fact that the state insurance fund not only is on a well-balanced and perfectly solvent basis, but also that there exists a net surplus sufficiently great as to permit of substantial, general rate reductions as of July 1, 1914, which rate reductions will be on a retroactive basis from the time each employer paid his first premium into the state insurance fund.

REPORT OF THE DEPARTMENT OF CLAIMS FOR MAY.

No. of injuries reported as of April 30.....	32,262	
No. of deaths reported as of April 30.....	140	
Total number reported.	32,402	
No. of injuries reported during May	4,527	
No. of deaths reported during May	27	
Total number reported as of May 31.....		36,951
No. of cases finally disposed of as of April 30	25,126	
No. of cases finally disposed of during May..	3,387	
Total number of cases disposed of as of May 31		28,513
Total number of cases pending as of May 31.....		8,438

NOTE: In addition to the 3,387 cases finally disposed of during the month of May, the Commission granted awards in 1,442 other cases, which were continued to a future date for further hearing.

PUBLIC EMPLOYES.

The following table will show the status of claims filed by public employes, separate files and records being maintained for this class of claims:

No. of injuries reported as of April 30.....	111	
No. of deaths reported as of April 30.....	3	
Total No. reported as of April 30.....	114	
No. of injuries reported during May	62	
No. of deaths reported during May	1	
Total No. reported as of May 31.....		177
No. of cases disposed of as of April 30.. .	0	
No. of cases disposed of during May.....	60	
Total No. disposed of.....		60
No. of cases pending May 31		117

NOTE: Of the 117 cases pending, as noted above, 27 are complete and ready for hearing, but are being held pending the payment into the state insurance fund of the premium payment due from the political subdivision involved.

COMMISSION GRANTS 102 DEATH CLAIMS.

Since its inception the commission has disposed of over 100 death claims. Each year there has been an increasing number, owing to the fact that each month has seen a substantial increase in the number of subscribers to the state insurance fund—thereby bringing more employes under the protecting wing of the state plan.

During the year 1912 five deaths as the result of industrial accidents were reported to the commission. The following year almost twelve times that number appeared on the records, while the records of the first five months of 1914 show that 93 were received during that period of time. Since January 1, 1914 the commission has allowed 64 death claims. In addition to this number ten other death claims were disposed of, but no awards granted, inasmuch as there were no dependents. Several other death claims were heard, but no awards were made, as it was found that the claimants did not die from injuries sustained while in the course of their regular employment. In all bona fide death claims the funeral expenses and medical fees are paid, and are not included in the amount awarded the dependents.

In passing, we cannot refrain from refering to the celerity with which the commission has handled death claims, as well as all other claims that have been brought to its attention. We cite the cases of Alvah Nall, 1627 Edwards Avenue, Springfield, Ohio, whose widow and six children were awarded $3744.00 four days after his death, and that of James D. Duffy, 223 North Stillwater Avenue, Dayton, Ohio, whose widow and five children were awarded $3744.00 seven days after his death. We would call your attention to other cases which were disposed of with equal rapidity. Four days after the death of Thomas D. Berry, Springfield, Ohio, his widow and seven children were awarded $3641.04. Within six days after the death of her husband, Mrs. John G. Shimp, 426 North Monroe Avenue, Columbus, Ohio, was awarded $2630.16. Mrs. Christopher Marck, and five children, corner of Oliver and John Streets, Cincinnati, Ohio, were awarded $3297.84 ten days after the death of father and husband. Again, the case of James Sowards, 364 Wood Avenue, Columbus, Ohio, whose widow and two children were granted an award of $2695.68 less than two weeks after his death.

Hence, it may readily be seen that the commission hears and disposes of claims without delay. Only in those cases where the applicant fails to file the necessary papers to perfect his or her claim is there tardiness in granting an award, and the extent of such delays is determined solely by the applicants.

The Workmen's Compensation Law provides that in cases where an injury sustained by an employe, while in the course of his regular employment, results in death his dependents shall receive an award of sixty-six and two-thirds of the deceased's average weekly wages, and to continue for all or such portion of the period of six years after the date of the injury, as the board in each case may determine, and not to amount to more than a maximum of $3750.00. But in no case shall said sixty-six and two-thirds per cent of average weekly wage exceed a maximum of $12 per week.

The following death claims have been disposed of to date and an award granted in each case:

CRUSHED BETWEEN CARS.

Claim No. 14341.
Name and Address—Frank Widener, 1710 Cutter Street, East Toledo, Ohio.
Employer—I. Gerson & Sons, Toledo, Ohio.
Date of Injury—November 18, 1913.
Nature of Injury—Crushed between two freight cars, injury resulting in instant death.
Dependents—Widow, daughter six years of age, and son twelve years of age.
Award—$2,910.96.

LEAVES WIDOW AND THREE SONS.

Claim No. 14463.
Name and Address—Jesse Alfrey, South Young Street, Middletown, Ohio.
Employer—The American Rolling Mill Co., Middletown, Ohio.
Date of Injury—November 10, 1913.
Nature of Injury—Piece of timber pressed against leg, causing fracture of left femur. Injury caused death November 14, 1913.
Dependents—Widow and three sons aged five, seven and eight years.
Award—$2,714.40.

WIDOW AND FIVE CHILDREN.

Claim No. 13518.
Name and Address—Joseph Yatician, 2478 West Fifth Street, Cleveland, Ohio.
Employer—The Cleveland Furnace Co., Cleveland, Ohio.
Date of Injury—October 31, 1913.
Nature of Injury—Clothing caught by shaft. Left arm wrenched off above elbow. Death was caused by shock.
Dependents—Widow and five children, youngest two years of age, and eldest eighteen years of age.
Award—$3,120.00.

WIDOW AND TEN-YEAR-OLD DAUGHTER.

Claim No. 13251.
Name and Address—Jacob Fail, cor. Wilson and Benton Avenues, Marion, Ohio.
Employer—The Marion Steam Shovel Co., Marion, Ohio.
Date of Injury—October 25, 1913.
Nature of Injury—Sizing tool under steam hammer. Tool glanced, striking him in abdomen, causing internal injuries. Injury resulted in death November 15, 1913.
Dependents—Wife and daughter ten years of age.
Award—$2,577.12.

FALLS FROM ROOF; SKULL CRUSHED.

Claim No. 13349.
Name and Address—S. A. Simmeon, 2021 College Avenue, S. W., Cleveland, Ohio.
Employer—The Cleveland Metal Roofing & Ceiling Co., Cleveland, Ohio.
Date of Injury—
Nature of Injury—Fell from roof; skull crushed on cement floor, causing death two hours later.
Dependents—Widow and two-month-old son.
Award—$2,496.00.

WIDOW AND SEVEN-YEAR-OLD SON.

Claim No. 12984.
Name and Address—Alexander Szabo, 2904 Bridge Avenue, Cleveland, Ohio.
Employer—Theodore Kundtz, Cleveland, Ohio.
Date of Injury—October 17, 1913.
Nature of Injury—Fell through floor and sustained fractured skull which caused death almost instantly.
Dependents—Widow and seven-year-old son.
Award—$2,170.69.

AGED FATHER AND MOTHER DEPENDENT.

Claim No. 12811.
Name and Address—Roy Hammond, New Lexington, Ohio.
Employer—A. Simons & Sons, New Lexington, Ohio.
Date of Injury—October 10, 1913.
Nature of Injury—Struck by falling stone. Internal injuries sustained, resulting in his death seven hours later.
Dependents—Aged father and mother.
Award—$1,872.00.

LEAVES WIDOW EIGHTY-FIVE YEARS OF AGE.

Claim No. 12626.
Name and Address—John W. Picking, 925 Ash Street, Toledo, Ohio.
Employer—The Clapp Excelsior Co., Toledo, Ohio.
Date of Injury—October 11, 1913.

Nature of Injury—Burned to death when fire destroyed mill.
Dependents—Widow eighty-five years of age.
Award—$1,872.00.

WIDOW AWARDED $2,808.00.

Claim No. 12379.
Name and Address—M. Resmarowick, 1527 Tecumseh Street, Toledo, Ohio.
Employer—The National Supply Co., Toledo, Ohio.
Date of Injury—October 2, 1913.
Nature of Injury—Casting fell on foot. Blood poison set in, resulting in his death October 27, 1913.
Dependent—Widow.
Award—$2,808.00.

KILLED IN DYNAMITE EXPLOSION

Claim No. 12570.
Name and Address—Emory Koster, Pine Grove, Ohio.
Employer—The Hanging Rock Iron Co., Hanging Rock, Ohio.
Date of Injury—October 10, 1913.
Nature of Injury—Explosion of dynamite killed him instantly.
Dependents—Widow and infant daughter.
Award—$1,560,00.

FALL OF COAL CRUSHES SKULL.

Claim No. 12358.
Name and Address—J. W. Tucker, Shawnee Avenue, South Zanesville, Ohio.
Employer—The South Zanesville Sewer Pipe & Brick Co., South Zanesville, Ohio.
Date of Injury—October 9, 1913.
Nature of Injury—Struck by falling shale. Skull was fractured, causing his death seven hours later.
Dependent—Widow.
Award—$2,184.00.

WIDOW AND THREE CHILDREN GET $2,808.00.

Claim No. 16490.
Name and Address—William A. Tipple, 186 Sycamore Street. Columbus, Ohio.
Employer—Albert F. Smith, Contractor, Columbus, Ohio.
Date of Injury—December 24, 1913.
Nature of Injury—Crushed to death by falling wall.
Dependents—Widow and three children aged five, nine and thirteen years.
Award—$2,808.00.

WIDOW AWARDED $3,300.96.

Claim No. 16437.
Name and Address—William Evans, 176 Chicago Avenue, Youngstown, Ohio.
Employer—The Brier Hill Steel Co., Youngstown, Ohio.
Date of Injury—December 23, 1913.
Nature of Injury—Fell over bridge abutment, sustaining compound fracture of limb, which resulted in his death on December 28, 1913.
Dependent—Widow.
Award—$3,300.96.

CAUGHT IN SHAFTING; KILLED INSTANTLY.

Claim No. 15974.
Name and Address—Darley A. Richards, 41½ North Fourth Street, Newark, Ohio.
Employer—The Licking Creamery Co., Newark, Ohio.
Date of Injury—December 15, 1913.
Nature of Injury—Caught in shafting and instantly killed.
Dependent—Widow.
Award—$2,527.20.

WIDOW AND SON GET $2,517.84.

Claim No. 14332.
Name and Address—John Bargerl, Hubbard, Ohio.
Employer—The Andrews & Hitchcock Co., Youngstown, Ohio.
Date of Injury—November 13, 1913.
Nature of Injury—Right foot crushed by cage and blood poison set in, resulting in his death December 4, 1913.
Dependent—Widow and son.
Award—$2,517.84.

WIDOW AND BABE AWARDED $2,945.88.

Claim No. 20477.
Name and Address—Liberato Colichio, 1834 Guernsey Street, Bellaire, Ohio.
Employer—The Rail & River Coal Co., Bellaire, Ohio.
Date of Injury—February 5, 1914.
Nature of Injury—Falling coal struck him on head. Colichio's neck was broken and he sustained internal injuries, which resulted in his death.
Dependents—Widow and two-year-old daughter.
Award—$2,945.88.

ABDOMINAL INJURY CAUSES DEATH.

Claim No. 19525.
Name and Address—John G. Shimp, 426 North Monroe Avenue, Columbus, Ohio.
Employer—The Kilbourne & Jacobs Mfg. Co., Columbus, Ohio.
Date of Injury—January 16, 1914.
Nature of Injury—Peritonitis superinduced by severe contusion of the abdominal wall, a piece of wood having struck him.
Dependent—Widow.
Award—$2,630.16.

WIDOW AND SIX SMALL CHILDREN.

Claim No. 19876.
Name and Address—John Magill, 103 S. Jackson Street, Mt. Vernon, Ohio.
Employer—The Mt. Vernon Bridge Co., Mt. Vernon, Ohio.
Date of Injury—February 3, 1914.
Nature of Injury—Crushed to death by falling girder.
Dependents—Widow and six children, youngest two months of age and eldest eleven years of age.
Award—$2,458.56.

LEAVES WIDOW AND FOUR CHILDREN.

Claim No. 19021.
Name and Address—William Martin, Wellston, Ohio.
Employer—The Superior Coal Co., Wellston, Ohio.
Date of Injury—January 24, 1914.
Nature of Injury—Struck by piece of steel. Arm and pelvis fractured, and death was caused by peritonitis.
Dependents—Widow and four children, youngest one year of age and eldest eight years of age.
Award—$2,496.00.

WIDOW AND THREE CHILDREN GET $2,652.00.

Claim No. 19419.
Name and Address—John Varga, Grant Street, Niles, Ohio.
Employer—The DeForest Sheet & Tinplate Co., Niles, Ohio.
Date of Injury—January 31, 1914.
Nature of Injury—Head crushed by falling sheet iron.
Dependents—Widow and three children, youngest five years of age and eldest twelve years of age.
Award—2,652.00.

HEAD SEVERED FROM HIS BODY.

Claim No. 19433.
Name and Address—Delmer Fight, 1134 W. Sixth Street, Cincinnati, Ohio.
Employer—The Mowbray & Robinson Co., Cincinnati, Ohio.
Date of Injury—January 23, 1914.
Nature of Injury—Caught in machine used for cleaning lumber and head was severed from body.
Dependents—Widow, four-year-old daughter and ten-year-old son.
Award—2,243.28.

THROWN INTO TANK OF BOILING WATER.

Claim No. 19535.
Name and Address—Jas. A. Thacker, Bates Hotel, Chillicothe, Ohio.
Employer—The Mead Pulp & Paper Co., Chillicothe, Ohio.
Date of Injury—February 1, 1914.
Nature of Injury—Died from effects of burns sustained when thrown into a tank of boiling water. Thacker had attempted to throw a belt off a pulley with his foot.
Dependents—Widow.
Award—$2,184.00.

AWARD WIDOW AND TWO CHILDREN $3,744.00.

Claim No. 18460.
Name and Address—Joseph Joswick, 1142 Tecumseh Street, Toledo, Ohio.
Employer—The National Supply Co., Toledo, Ohio.
Date of Injury—January 24, 1914.
Nature of Injury—Piece of steel struck him on neck, cutting jugular vein, death resulting from hemorrhage three hours later.
Dependents—Widow and two children both under two years of age.
Award—$3,744.00.

COMMISSION AWARDS WIDOW $3,432.00.

Claim No. 18426.
Name and Address—Wendell Miller, 1032 Baker Street, Toledo, Ohio.
Employer—W. H. Haskell & Co., Toledo, Ohio.
Date of Injury—January 13, 1914.
Nature of Injury—Struck by stick which he was using to throw belt off a pulley, causing a rupture of the liver.
Dependents—Widow.
Award—$3,432.00.

WIDOW AWARDED $3,307.20.

Claim No. 18274.
Name and Address—Ray Wheeler, Barberton, Ohio.
Employer—The Webster Mfg. Co., Tiffin, Ohio.
Date of Injury—January 19, 1914.
Nature of Injury—Fell sixteen feet onto a cement floor, causing concussion of the brain.
Dependents—Widow.
Award—$3.307.20.

INTERNAL INJURIES RESULT IN DEATH.

Claim No. 18156.
Name and Address—Glen Johnson, Barnesville, Ohio.
Employer—Edward Lynch, Baileys Mills, Ohio.
Date of Injury—Januarv 21, 1914.
Nature of Injury—Riding in mine entry on car, when he was caught between roof and motor, causing internal injuries from which he died.
Dependents—Widow.
Award—$2,140.32.

CUT IN TWO AT WAIST BY CAR.

Claim No. 17438.
Name and Address—Joseph White, 147 North Main Street, Middletown, O.
Employer—The John Arpp Co., Middletown, Ohio.
Date of Injury—January 10, 1914.
Nature of Injury—Fell under moving freight car. Cut in two at waist.
Dependents—Widow.
Award—$2,184.00.

WIDOW AND CHILD RECEIVE $2,680.08.

Claim No. 17306.
Name and Address—Steve Nagy, Martins Ferry, Ohio.
Employer—The Y. & O. Coal Co., Cleveland, Ohio.
Date of Injury—January 6, 1914.
Nature of Injury—Electrocuted by coming in contact with high tension wire.
Dependents—Widow, three-year-old daughter and infant son.
Award—$2,680.08.

AWARD WIDOW AND THREE CHILDREN $3,744.00.

Claim No. 17046.
Name and Address—W. Opotney, Neffs, Ohio.
Employer — The Pursglove-Maher Coal Co., Cleveland, Ohio.
Date of Injury—January 7, 1914.
Nature of Injury—Internal injuries sustained when piece of coal struck him while loading car.
Dependents—Widow and three children, youngest three years of age, and eldest ten years of age.
Award—$3,744.00.

LEAVES WIDOW AND TWO SMALL CHILDREN.

Claim No. 16728.
Name and Address—J. Gamon, 2571 W. Seventh Place, Cleveland, Ohio.
Employer—The Cleveland Furnace Co., Cleveland, Ohio.
Date of Injury—December 30, 1913.
Nature of Injury—Internal injuries caused by hoisting crane.
Dependents—Widow and two daughters, aged five months and five years respectively.
Award—$2,517.84.

WIDOW AWARDED $3,744.00.

Claim No. 15821.
Name and Address—Telisphore Belanger, 1010 Front Street, Toledo, Ohio.
Employer—Gilmore Bros., East Toledo, Ohio.
Date of Injury—December 9, 1913.
Nature of Injury—Fell twenty feet, striking bottom of a dry dock. Sustained a fractured femur, and died twenty days later from thrombo-phlebitis.
Dependents—Widow.
Award—$3,744.00.

COMMISSION AWARDS WIDOW $3,744.00.

Claim No. 24021.
Name and Address—John M. Anisansel, 8626 Wade Park Avenue, Cleveland, Ohio.
Employer—The Standard Oil Company of Ohio, Cleveland, Ohio.
Date of Injury—February 26, 1914.
Nature of Injury—Struck by train, sustaining numerous fractures, contusions and lacerations.
Dependents—Widow.
Award—$3,744.00.

FALLS INTO VAT OF HOT WATER.

Claim No. 24115.
Name and Address—Abraham Miller, Middlefield, Ohio.

Employer—The Middlefield Basket & Veneer Co., Middlefield, Ohio.
Date of Injury—March 3, 1914.
Nature of Injury—Severely scalded when he fell into vat of hot water.
Dependents—Widow and six-year-old son.
Award—$2,271.36.

AWARD WIDOW AND TWO CHILDREN $2,808.00.

Claim No. 23634.
Name and Address—Steve Kiss, 2794 E. 79th Street, Cleveland, Ohio.
Employer—The Cleveland Window Cleaning Co., Cleveland, Ohio.
Date of Injury—February 21, 1914.
Nature of Injury—Fractured skull, resulting in death within six hours. Kiss was cleaning a second story window and fell to the sidewalk.
Dependents—Widow and two children under two years of age.
Award—2,808.00.

CRUSHED TO DEATH BY FIRE BOX.

Claim No. 23510.
Name and Address—Lawrence Du Fresne, 909 Rice Avenue, Lima, Ohio.
Employer—Lima Locomotive Corporation, Lima, Ohio.
Date of Injury—February 24, 1914.
Nature of Injury—Crushed to death when a fire box fell on him.
Dependents—Invalid father partially dependent.
Award—$1,560.00.

WHIRLED ABOUT SHAFTING AND KILLED.

Claim No. 23480.
Name and Address—William C. Rowe, Steece, Ohio.
Employer—The Superior Portland Cement Co., Superior, Ohio.
Date of Injury—March 1, 1914.
Nature of Injury—Sustained a fractured skull and both legs were broken when he attempted to put belt on a pulley at full speed with his hand. Arm was caught and he was whirled about shafting, meeting instant death.
Dependents—Father and mother.
Award—$1,872.00.

WIDOW AND CHILDREN GET $3,744.00.

Claim No. 22948.
Name and Address—Harry Falquet, 332 Milton Street, Cincinnati, Ohio.
Employer—The Christian Moerlein Brewing Co., Cincinnati, Ohio.
Date of Injury—February 23, 1914.
Nature of Injury—His skull was fractured as a result of falling a distance of twelve feet from a scaffold.
Dependents—Widow and two sons, Eugene, twelve, and Louis, eighteen.

WIDOW AND FOUR CHILDREN AWARDED $2,539.68.

Claim No. 22472.
Name and Address—George Hortea, Martins Ferry, Ohio.
Employer—The Youghiogheny & Ohio Coal Co., Martins Ferry, Ohio.
Date of Injury—February 20, 1914.
Nature of Injury—Internal injuries sustained when struck by falling coal.
Dependents—Widow and four children, youngest three years of age, and eldest ten years of age.
Award—$2,539.68.

WIDOW AND BABE RECEIVE $3,641.04.

Claim No. 27687.
Name and Address—Edward Croft, North Hill, Akron, Ohio.
Employer—The Akron Peoples' Telephone Co., Akron, Ohio.
Date of Injury—March 27, 1914.
Nature of Injury—Skull crushed when he fell 25 feet and struck concrete sidewalk. Croft fell from a pole after receiving electric shock.
Dependents—Widow and twenty-two-month old son.
Award—$3,641.04.

AWARD WIDOW AND DAUGHTER $3,744.00.

Claim No. 25703.
Name and Address—John H. Rogers, 31 Hart Place, Akron, Ohio.
Employer—The Akers & Harpham Co., Akron, Ohio.
Date of Injury—March 16, 1914.
Nature of Injury—Fell 18 feet from scaffold, and concussion of the brain resulted.
Dependents—Widow and daughter.
Award—$3,744.00.

WIDOW AND SON RECEIVE $3,744.00.

Claim No. 25165.
Name and Address—Robt. Kidston, 1024 Orange Street, Youngstown, Ohio.
Employer—J. R. Thomas Sons, Youngstown, Ohio.

Date of Injury—March 12, 1914.
Nature of Injury—Kneeling beside elevator with head in elevator shaft when counter-weight struck him on back of head, breaking his neck.
Dependents—Widow and twelve-year-old son.
Award—$3,744.00.

AWARD WIDOW AND CHILDREN $3,369.60.

Claim No. 23245.
Name and Address—Anthony Padula, Navarre, Ohio.
Employer—The Massilon Coal Mining Co., Cleveland, Ohio.
Date of Injury—February 27, 1914.
Nature of Injury—Fracture of pelvis, resulting in intestinal paralysis. Padula was caught under a cutting machine when it jumped the blocks.
Dependents—Widow, four-year-old daughter and six-year-old son.
Award—$3,369.60.

COMMISSION AWARDS WIDOW $3,744.00.

Claim No. 26450.
Name and Address—Jas. S. Bowman, 8519 Hough Avenue, Cleveland, Ohio.
Employer—The Cleveland & Sandusky Brewing Co., Cleveland, Ohio.
Date of Injury—March 18, 1914.
Nature of Injury—Skull fractured when cylinder head on compression of ice machine bursted.
Dependents—Widow.
Award—$3,744.00.

CRUSHED TO DEATH BY CAR.

Claim No. 26035.
Name and Address—Alex Marma, St. Clairsville, Ohio.
Employer—The Provident Coal Co., St. Clairsville, Ohio.
Date of Injury—March 16, 1914.
Nature of Injury—Head and chest crushed when he was struck by car that jumped the track.
Dependents—Widow.
Award—$2,823.60.

LEAVES WIDOW AND SON.

Claim No. 24701.
Name and Address—Hugh Ruddy, 3325 Guernsey Street, Bellaire, Ohio.
Employer—The Wheeling Steel & Iron Co., Wheeling, West Virginia.
Date of Injury—March 8, 1914.
Nature of Injury—Fell from trestle. Ribs were broken and left lung punctured, causing hemorrhage and traumatic pneumonia, which resulted in his death.
Dependents—Widow and son.
Award—$2,290.08.

AWARD OF $3,322.80 ALLOWED WIDOW.

Claim No. 23614.
Name and Address—Fred Siedow, 1553 Addison Road, Cleveland, Ohio.
Employer—The Lake Shore Moving & Storage Co., 8131 Superior Avenue, Cleveland, Ohio.
Date of Injury—March 2, 1914.
Nature of Injury—Safe fell on him, crushing his leg. Death was caused by surgical shock, following amputation of leg.
Dependents—Widow.
Award—$3,322.80.

DEPENDENT MOTHER RECEIVES $3,744.00.

Claim No. 24575.
Name and Address—Chas. P. Seeney, New Straitsville, Ohio.
Employer—The Chartiers Oil Co., Pittsburgh, Pennsylvania.
Date of Injury—March 7, 1914.
Nature of Injury—Body was crushed when he fell into fly wheel of gas engine.
Dependents—Mother.
Award—$3.744.00.

LEAVES WIDOW AND SIX-YEAR-OLD SON.

Claim No. 16489.
Name and Address—Ernest Huggins, 1258 W. Town Street, Columbus, Ohio.
Employer—Albert F. Smith, Columbus, Ohio.
Date of Injury—December 24, 1913.
Nature of Injury—Buried under falling wall, sustaining a broken back, which caused his death January 8, 1914.
Dependents—Widow and six-year-old son.
Award—$2,371.20.

AGED MOTHER AWARDED $2,028.00.

Claim No. 19873.
Name and Address—Dale E. Hoern, 128 Main Street, Tiffin, Ohio.
Employer—The Ohio Light & Power Co., Tiffin, Ohio.
Date of Injury—January 31, 1914.

Nature of Injury—Came in contact with high tension wire and death was caused by electrical shock.
Dependents—Mother.
Award—$2,028.00.

COMMISSION AWARDS WIDOW $3,744.00.

Claim No. 26671.
Name and Address—Gotthilf L. Muenchow, 2121 Vine Street, Cincinnati, Ohio.
Employer—The Ohio Union Brewing Co., Cincinnati, Ohio.
Date of Injury—March 17, 1914.
Nature of Injury—Skull crushed when street car struck the wagon which he was driving, and threw him to the pavement.
Dependents—Widow.
Award—$3,744.00.

$3,728.40 AWARDED WIDOW AND CHILD.

Claim No. 29734.
Name and Address—Roy Cramer, 39 S. Ninth Street, Columbus, Ohio.
Employer—The Hoster-Columbus Associated Breweries Co., Columbus, Ohio.
Date of Injury—April 10, 1914.
Nature of Injury—Skull fractured when he fell from scaffold.
Dependents—Widow and eleven-year-old son.
Award—$3,728.40.

FALLING SLATE BREAKS HIS NECK.

Claim No. 28331.
Name and Address—Kalem Pataky, St. Clairsville, Ohio.
Employer—The Provident Coal Co., St. Clairsville, Ohio.
Date of Injury—March 30, 1914.
Nature of Injury—Neck broken and badly crushed about shoulders when buried under falling slate.
Dependents—Widow and three small children.
Award—$2,305.68.

CRUSHED TO DEATH BY CAR.

Claim No. 28312.
Name and Address—William Morris, Maynard, Ohio.
Employer—Trolls Coal Mining Co., St. Clairsville, Ohio.
Date of Injury—March 25, 1914.
Nature of Injury—Crushed pelvis and internal injuries sustained when squeezed by car. Death resulted therefrom four days later.
Dependents—Widow and infant child.
Award—$2,146.56.

FATHER AND MOTHER AWARDED $1,000.00.

Claim No. 3090.
Name and Address—Merlin L. Faulkner, N. Ohio Avenue, Sidney, Ohio.
Employer—The Sidney Telephone Co., Sidney, Ohio.
Date of Injury—March 13, 1913.
Nature of Injury—Came in contact with high tension wire and died instantly.
Dependents—Father and mother.
Award—$1,000.00.

WIRE SPOKE PUNCTURES BRAIN.

Claim No. 6947.
Name and Address—Chas. Zamierucha, 1419 Hamilton Street, Toledo, Ohio.
Employer—The Gendron Wheel Co., Toledo, Ohio.
Date of Injury—July 2, 1913.
Nature of Injury—Fellow-workman threw wire wheel, one of the spokes of which punctured Zamierucha's skull back of the ear. Death resulted from a puncture of the brain.
Dependents—Mother and three small brothers.
Award—$2,452.32.

AWARD WIDOW AND TWO CHILDREN $2,808.00.

Claim No. 20933.
Name and Address—William F. Steward, 320 Arch Street, Akron, Ohio.
Employer—The Akron Lumber Co., Akron, Ohio.
Date of Injury—February 9, 1914.
Nature of Injury—Sustained fractured skull as a result of being thrown from wagon when horse scared at an automobile.
Dependents—Widow and two children.
Award—$2,808.00.

WIDOW AND CHILDREN AWARDED $3,400.00.

Claim No. 8454.
Name and Address—Christopher Lieberum, 2704 Monroe Avenue, Cleveland, Ohio.
Employer—The Upson Nut Co., Cleveland, Ohio.
Date of Injury—July 30, 1913.

Nature of Injury—Crushed to death by electric crane.
Dependents—Widow and two children.
Award—$3,400.00.

BURNED IN GASOLINE EXPLOSION.

Claim No. 8152.
Name and Address—John Moeller, 1752 Parsons Avenue, Columbus, Ohio.
Employer—The Federal Glass Co., Columbus, Ohio.
Date of Injury—July 21, 1913.
Nature of Injury—Severely burned when gasoline toch exploded. Burns caused his death July 29, 1913.
Dependents—Mother, partially.
Award—$1,000.00.

FALLS 37 FEET, NECK BROKEN.

Claim No. 9880.
Name and Address—Percy C. Cadman, 47 McKinley Avenue, Youngstown, Ohio.
Employer—The Brier Hill Steel Co., Youngstown, Ohio.
Date of Injury—August 22, 1913.
Nature of Injury—Broken neck as the result of a fall. Fell from top of pump house, a distance of 37 feet.
Dependents—Father, mother, two sisters and a brother, partially dependent.
Award—$1,386.67.

LEAVES WIDOW AND FIVE CHILDREN.

Claim No. 11616.
Name and Address—W. M. Schwartzer, Bryan, Ohio.
Employer—The Bryan Telephone Co., Bryan, Ohio.
Date of Injury—September 29, 1913.
Nature of Injury—Skull fractured when he fell from tree through which he was stringing wires.
Dependents—Widow and five children, youngest three and eldest fourteen years of age.
Award—$2,218.32.

$3,400.00 AWARDED WIDOW AND FOUR CHILDREN.

Claim No. 10168.
Name and Address—Hyland Burton, 622 Mt. Pleasant Street, Youngstown, Ohio.
Employer—The Vindicator Printing Co., Youngstown, Ohio.
Date of Injury—August 28, 1913.
Nature of Injury—Riding on motorcycle which collided with an automobile. Handlebar penetrated abdomen and death resulted a few hours later from shock and loss of blood.
Dependents—Widow and four children, youngest two years of age, and eldest eleven years of age.
Award—$3,400.00.

AWARD WIDOW AND CHILD $2,527.20.

Claim No. 10773.
Name and Address—Peter Schwartz, Camp Chase, Ohio.
Employer—The Columbus Transfer Co., Columbus, Ohio.
Date of Injury—September 8, 1913.
Nature of Injury—Bursted blood vessel, caused by heavy lifting.
Dependents—Widow and eleven-year-old son.
Award—$2,527.20.

FALLS ON WAGON STANDARD, DIES WEEK LATER.

Claim No. 10026.
Name and Address—Jas. H. Croy, 713 W. Water Street, Piqua, Ohio.
Employer—C. L. Wood, Piqua, Ohio.
Date of Injury—August 25, 1913.
Nature of Injury—Fell on wagon standard, breaking ribs which punctured the lung. Died a week later from hypostatic pneumonia.
Dependents—Widow.
Award—$1,987.44.

AWARD WIDOW AND CHILD $3,120.00.

Claim No. 8831.
Name and Address—L. H. Stephenson, Chillicothe Street, Portsmouth, Ohio.
Employer—The Portsmouth Engine Co., Portsmouth, Ohio.
Date of Injury—August 7, 1913.
Nature of Injury—Crushed to death by fly wheel which fell on him.
Dependents—Widow and child.
Award—$3,120.00.

WIDOW AND INFANT DAUGHTER GET $3,400.00.

Claim No. 6814.
Name and Address—Samuel H. Lewis, Glouster, Ohio.
Employer—The Wassall Brick Co., Glouster, Ohio.
Date of Injury—June 25, 1913.

Nature of Injury—Hurt internally and sustained numerous fractures as a result of being dragged under car.
Dependents—Widow and infant daughter.
Award—$3,400.00.

WHIRLED AROUND SHAFT, HEAD CRUSHED.

Claim No. 6210.
Name and Address—Frank D. Hall, Roseville, Ohio.
Employer—The Nelson-McCoy Sanitary & Stoneware Co., Roseville, Ohio.
Date of Injury—June 20, 1913.
Date of Injury—Head and body crushed. Belt from main shaft to counter shaft caught Hall's feet and wound him around main shaft.
Dependents—Widow and two-year-old son.
Award—$3,272.88.

LEAVES WIDOW AND FOUR CHILDREN.

Claim No. 6069.
Name and Address—Leo Slavinski, 6822 Rathbun Avenue N. E., Cleveland, O.
Employer—The Cleveland Brick & Clay Co., Cleveland, Ohio.
Date of Injury—June 16, 1913.
Nature of Injury—Internal injuries sustained as a result of being caught in a brick machine.
Dependents—Widow and four children.
Award—$2,330.64.

WIDOW AND CHILD AWARDED $3,266.64.

Claim No. 5898.
Name and Address—Virgil Maze, 111 Jefferson Street, Middletown, Ohio.
Employer—The Middletown Gas & Electric Co., Middletown, Ohio.
Date of Injury—June 10, 1913.
Nature of Injury—Electric shock as a result of coming in contact with a high tension wire.
Dependents — Widow and four-year-old child.
Award—$3,266.64.

SCALP CUT; BLOOD POISON CAUSES DEATH.

Claim No. 4605.
Name and Address—Edward Welch, 641 Carlton Street, Toledo, Ohio.
Employer—The Ohio Dairy Co., Toledo, Ohio.
Date of Injury—May 8, 1913.
Nature of Injury—Sustained a bad scalp wound when a ten-gallon milk can struck him. Blood poison set in, causing his death.
Dependents—Widow and child.
Award—$2,992.08.

SHOT WHILE ON DUTY BY MASKED MAN.

Claim No. 4204.
Name and Address—C. B. Evans, 231 Main Street, Hamilton, Ohio.
Employer—The Champion Coated Paper Co., Hamilton, Ohio.
Date of Injury—March 20, 1913.
Nature of Injury—A masked man stepped out of a closet, ordered him to throw up his hands, and shot him. Bullet entered shoulder, and later it was necessary to amputate arm at shoulder. Death was caused by septic meningitis.
Dependents—Widow.
Award—$2,910.96.

AWARD WIDOW AND THREE CHILDREN $3,400.00.

Claim No. 3551.
Name and Address—Andrew Sampson, 1619 Starkweather Avenue, Cleveland, Ohio.
Employer—The Upson Nut Co., Cleveland, Ohio.
Date of Injury—April 1, 1913.
Nature of Injury—Sampson was repairing elevator and fell about 30 feet to pit of elevator with cage. Hip crushed and internal injuries, which resulted in almost instant death.
Dependents—Widow and three children, aged nine, eleven, and thirteen years.
Award—$3,400.00.

FOUND DEAD IN BOILER ROOM.

Claim No. 2624.
Name and Address—John Schatz, 144 Vine Street, Columbus, Ohio.
Employer—The Columbus Iron & Steel Co., Columbus, Ohio.
Date of Injury—February 25, 1913.
Nature of Injury—Found dead in boiler room. Cause of death unknown. Lung ruptured by broken ribs.
Dependents—Widow and one child.
Award—$2,736.00.

DEPENDENTS GRANTED AWARD OF $3,042.00.

Claim No. 507.
Name and Address—George E. Baird, South Baltimore Street, Middletown, Ohio.

Employer—The Wardlow-Thomas Paper Co., Middletown, Ohio.
Date of Injury—October 3, 1912.
Nature of Injury—Mud drum of boiler bursted and Baird was found dead under a pile of brick. Death was caused by burns and suffocation.
Dependents—Widow and two children, Louise four and Rhoda eight.
Award—$3,042.00.

CRUSHED TO DEATH BY ELEVATOR.

Claim No. 17233.
Name and Address—Louis Richendollar, Hanging Rock, Ohio.
Employer—The Hanging Rock Iron Co., Hanging Rock, Ohio.
Date of Injury—January 9, 1914.
Nature of Injury—Crushed by elevator, dying a few hours later from hemorrhage of ruptured kidney.
Dependents—Widow and three sons, Noah ten, Lewis thirteen and John fifteen.
Award—$1,560.00.

LEAVES WIDOW AND SIX CHILDREN.

Claim No. 26449.
Name and Address—Sylvester H. Bucher, 1239 West Second Street, Dayton, Ohio.
Employer—The City Railway Co., Dayton, Ohio.
Date of Injury—March 17, 1914.
Nature of Injury—Both legs broken, four ribs fractured and internal injuries, which resulted in his death two days later.
Dependents—Widow and six children, youngest two years of age and eldest twenty years of age.
Award—$2,620.80.

AWARD WIDOW AND SEVEN CHILDREN $3,641.04.

Claim No. 21040.
Name and Address—Thomas J. Berry, Sugar Grove Hill, Springfield, Ohio.
Employer—The Springfield Gas Co., Springfield, Ohio.
Date of Injury—February 11, 1914.
Nature of Injury—Burnt from head to knees in gas explosion, when purifier house caught fire. Died few hours afterwards.
Dependents—Widow and seven children, youngest three years of age and eldest seventeen years of age.
Award—$3,641.04.

SCALDED IN TANK OF HOT WATER.

Claim No. 17309.
Name and Address—Mark Dew, 608 West Seventh Street, Cincinnati, Ohio.
Employer—The J. D. Randall Co., Cincinnati, Ohio.
Date of Injury—January 2, 1914.
Nature of Injury—Burned and scalded when he slipped on a wet wooden runway and fell into tank of hot water. Death resulted five days later.
Dependents—Widow.
Award—$2,081.04.

DEPENDENT FATHER RECEIVES $1,248.00.

Claim No. 15154.
Name and Address—Paul Szanislow, 1982 Columbus Road, Cleveland, Ohio.
Employer—Theodore Kundtz, Cleveland, Ohio.
Date of Injury—November 24, 1913.
Nature of Injury—Fractured pelvis and bladder perforated as a result of being struck by a saw log. Shock caused his death six days later.
Dependents—Father.
Award—$1,248.00.

$3,676.00 AWARDED WIDOW AND FOUR CHILDREN.

Claim No. 13205.
Name and Address—James E. Kennison, South Zanesville, Ohio.
Employer—The American Rolling Mill Co., Zanesville, Ohio.
Date of Injury—October 25, 1913.
Nature of Injury—Skull crushed by piece of fly wheel which bursted.
Dependents—Widow and four children.
Award—$3,676.00.

WIDOW AND FIVE CHILDREN AWARDED $3,744.00.

Claim No. 34147.
Name and Address—James D. Duffy, 223 North Stillwater Avenue, Dayton, Ohio.
Employer—M. J. Gibbons, Dayton, Ohio.
Date of Injury—May 11, 1914.
Nature of Injury—Six fractured ribs, crushed pelvis and internal injuries sustained when a blast coil fell on him. Death was caused by shock and hemorrhages.
Dependents—Widow and five children.
Award—$3,744.00.

SIXTEEN-YEAR-OLD DAUGHTER

Claim No. 10455.
Name and Address—George Maxwell, Youngstown, Ohio.
Employer—The Trussed Concrete Steel Co., Youngstown, Ohio.
Date of Injury—August 28, 1913.
Nature of Injury—Hand was lacerated by hammer. Became infected, resulting in his death October 19, 1913.
Dependent—Sixteen-year-old daughter.
Award—$2,343.12.

BURNED AND SUFFOCATED BY STEAM.

Claim No. 33884.
Name and Address—James Sowards, 364 Wood Avenue, Columbus, Ohio.
Employer—The Buckeye Steel Castings Co., Columbus, Ohio.
Date of Injury—May 8, 1914.
Nature of Injury—Steam pipe bursted and Sowards was burnt and suffocated by escaping steam.
Dependents—Widow and two children.
Award—$2,695.68.

WIDOW AND CHILDREN RECEIVE $3,744.00.

Claim No. 27242.
Name and Address—S. J. Williams, Deerfield, Ohio.
Employer—The Hutson Coal Co., Cleveland, Ohio.
Date of Injury—March 23, 1914.
Nature of Injury—Falling slate broke his back. Died April 15 from paralysis.
Dependents—Widow and two children, Boyd aged nine months and Leslie aged five years.
Award—$3,744.00.

HEAD CRUSHED AND BODY MANGLED.

Claim No. 41.
Name and Address—Harry E. Shaffer, (near) Paulding, Ohio.
Employer—The Paulding Cement Products Co., Paulding, Ohio.
Date of Injury—May 7, 1912.
Nature of Injury—Head crushed and body mangled as a result of trying to put belt on pulley which was in motion. Arm was caught and body was whirled around shaft.
Dependents—Widow and infant daughter.
Award—$1,872.00.

BURNED TO DEATH IN FACTORY FIRE.

Claim No. 1013.
Name and Address—John A. Horn, 514 West Columbus Avenue, Bellefontaine, Ohio.
Employer—The Buckeye Carriage Body Co., Bellefontaine, Ohio.
Date of Injury—December 6, 1912.
Nature of Injury—Suffocated and burned to death when fire destroyed factory.
Dependent—Widow.
Award—$2,808.00.

ELEVATOR BREAKS HIS NECK.

Claim No. 296.
Name and Address—Isaac Williams, Perry Street, Roseville, Ohio.
Employer—The Brush-McCoy Pottery Co., Zanesville, Ohio.
Date of Injury—August 15, 1912.
Nature of Injury—Neck broken when he was caught between elevator and floor.
Dependent—Widow.
Award—$1,962.48.

AGED MOTHER AWARDED $1,560.00.

Claim No. 2293.
Name and Address—Lewis Hoffman, 412 Campbell Street, Sandusky, Ohio.
Employer—The Klotz Machine Co., Sandusky, Ohio.
Date of Injury—February 14, 1913.
Nature of Injury—Skull fractured when emery wheel broke and half of it struck him on forehead, causing his death two days later.
Dependent—Mother.
Award—$1,560.00.

YOUNG WIDOW AWARDED $1,974.96.

Claim No. 3143.
Name and Address—Jesse Craig, corner Livingston Avenue and Pearl Street, Columbus, Ohio.
Employer—The Hoster-Columbus Associated Breweries Co., Columbus, Ohio.
Date of Injury—February 7, 1913.
Nature of Injury—In a friendly tussle with a fellow-workman, Craig fell under a horse which stepped on his head, fracturing it. Death resulted a few hours later.
Dependent—Seventeen-year-old widow.
Award—$1,974.96.

SHAFT CRUSHES SKULL; WIDOW GETS $2,028.00.

Claim No. 1645.
Name and Address—Thomas A. King, Columbus, Ohio.
Employer—Topper Bros., Columbus, Ohio.
Date of Injury—January 18, 1913.
Nature of Injury—Skull crushed by shaft which was being lowered by derrick.
Dependent—Widow.
Award—$2,028.00.

AWARD WIDOW AND FOUR CHILDREN $3,378.96.

Claim No. 30090.
Name and Address—William Mahar, 852 North Second Street, Hamilton, Ohio.
Employer—The Champion Coated Paper Co., Hamilton, Ohio.
Date of Injury—April 9, 1914.
Nature of Injury—Caught in paper machine. Chest was crushed and numerous injuries sustained about head. Hypostatic pneumonia was the immediate cause of death.
Dependents—Widow and four children, youngest two months old, eldest nine years old.
Award—$3,378.96.

DEATH CAUSED BY HEAT PROSTRATION.

Claim No. 7123.
Name and Address—Sidney W. Rhodes, Middletown, Ohio.
Employer—The Middletown Gas & Electric Co., Middletown, Ohio.
Date of Injury—July 8, 1913.
Nature of Injury—Prostrated by heat and death resulted shortly afterwards.
Dependent—Widow.
Award—$2.184.00.

$3,276.00 AWARDED WIDOW AND THREE CHILDREN.

Claim No. 8260.
Name and Address—Frank Verbes, 2922 East 37th Street, Cleveland, Ohio.
Employer—The Upson Nut Co., Cleveland, Ohio.
Date of Injury—July 28, 1913.
Nature of Injury—Fractured pelvis and internal injuries, resulting in his death.
Dependents—Widow and three children, Nicholas one, George two and Draga five years of age.
Award—$3,276.00.

FATHER AND SISTER WERE DEPENDENT.

Claim No. 18288.
Name and Address—Ezra Bowman, 2525 West Third Street, Dayton, Ohio.
Employer—John D. Shively, Dayton, Ohio.
Date of Inury—January 20, 1914.
Nature of Injury—Fracture of skull and cerebral hemorrhages, causing death.
Dependents—Father and sister.
Award—$1,000.00.

WIDOW AND SIX CHILDREN RECEIVE $3,744.00.

Claim No. 18665.
Name and Address—Alvah Nall, 1627 Edwards Avenue, Springfield, Ohio.
Employer—The Springfield, Troy and Piqua Railway Co., Springfield, Ohio.
Date of Injury—January 23, 1914.
Nature of Injury—Severe burns of entire body, causing death.
Dependents—Widow and six children, youngest one year of age and eldest sixteen years of age.
Award—$3,744.00.

SKULL FRACTURED; SIX DEPENDENT ON HIM.

Claim No. 16898.
Name and Address—George Heckman, North Industry, Ohio.
Employer—The Agricultural & Commercial Lime Co., Canton, Ohio.
Date of Injury—January 5, 1914.
Nature of Injury—Fractured skull, causing death.
Dependents—Father, mother, three small sisters and one brother.
Award—$1,872.00.

WIDOW AND FIVE CHILDREN GET $3,297.84.

Claim No. 31120.
Name and Address—William F. Goodwin, 138 Hayden Avenue, Columbus, Ohio.
Employer—The Columbus Railway, Power & Light Co., Columbus, Ohio.
Date of Injury—April 18, 1914.
Nature of Injury—Electric shock caused death. Had ground wire in hand and his ear came in contact with high tension wire on pole.
Dependents—Widow and five children, youngest three years of age and eldest seventeen years of age.
Award—$3,297.84.

WIDOW AND TWO-YEAR-OLD SON RECEIVE $3,744.00.

Claim No. 13927.
Name and Address—Frank Buczek, Maynard, Ohio.
Employer—The Pursglove-Maher Co., St. Clairsville, Ohio.
Date of Injury—November 9, 1913.
Nature of Injury—Fracture of three ribs, both arms, and head crushed.
Dependents—Widow and two-year-old son.
Award—$3,744.00.

AWARD OF $2,910.96 GRANTED WIDOW.

Claim No. 29609.
Name and Address—Christopher Marck, corner Oliver and John Streets, Cincinnati, Ohio.
Employer—The E. Kahns Sons Co., Cincinnati, Ohio.
Date of Injury—April 9, 1914.
Nature of Injury—Broken back, internal injuries, multiple contusions and abrasions, resulting in death.
Dependent—Widow.
Award—$2,910.96.

AWARD WIDOW AND CHILD $3,612.96.

Claim No. 28724.
Name and Address—Peter Sirianna, Lafferty, Ohio.
Employer—The Virginia Hill Coal Co., Lafferty, Ohio.
Date of Injury—March 12, 1914.
Nature of Injury—Crushed to death by falling stone. Every rib was broken and skull and legs fractured.
Dependents—Widow and one child.
Award—$3,612.96.

$3,744.00 AWARD GRANTED.

Claim No. 19987.
Name and Address—Chas. Seederley, Columbiana, Ohio.
Employer—The William Tod Co., Youngstown, Ohio.
Date of Injury—February 6, 1914.
Nature of Injury—Crushing injury to right hip, causing hemorrhages and death.
Dependents—Widow and two children, Walter three, and Frances, eight years of age.
Award—$3,744.00.

SCREEN BREAKS HIS NECK.

Claim No. 20493.
Name and Address—George Voros, Coke Otto, Ohio.
Employer—The Hamilton-Otto Coke Co., Hamilton, Ohio.
Date of Injury—January 2, 1914.
Nature of Injury—Caught by screen while attempting to screw down grease cup. Neck was broken.
Dependent—Widow.
Award—$2,215.20.

WIDOW AND CHILD GET $2,795.52.

Claim No. 27815.
Name and Address—Chas. C. Friel, Lore City, Ohio.
Employer—The Morris Coal Co., Cleveland, Ohio.
Date of Injury—March 25, 1914.
Nature of Injury—Fall of coal crushed his head.
Dependents—Widow and nine-month-old son.
Award—$2,795.52.

Bulletin of The Industrial Commission of Ohio

Comprising

Administration of Workmen's Compensation Insurance; Inspection of Workshops, Factories, Public Buildings, Mines, Boilers, Licensing of Steam Engineers; Censorship of Motion Picture Films; Investigation and Statistics; Arbitration and Conciliation

Vol. I. COLUMBUS, OHIO, DECEMBER 1, 1913 No. 1

CONTENTS

The Industrial Commission

The creation of The Industrial Commission of Ohio was a development of the idea that in order to secure the greatest efficiency and economy in the administration of public affairs modern business methods should be applied to the organization and conduct of the affairs of the state.

In administering the Workmen's Compensation law of 1911, the State Liability Board of Awards, which was superseded on September 1, 1913 by The Industrial Commission of Ohio, was impressed with the close relation existing between the work of that department and the inspection of the factories, mines, steam boilers and the examination and licensing of steam boilers and the examination and licensing of steam engineers and the gathering of industrial statistics. Seven separate and distinct state departments were being maintained each of which had its separate and distinct office force and staff of field officers and each of which prepared and filed an annual report containing statistical and other information, and the work of each department was being duplicated to some extent by one or more of the other departments. The seven departments referred to were the State Liability Board of Awards, Commissioner of Labor Statistics, Chief Inspector of Mines, Chief Inspector of Workshops and Factories, Chief Examiner of Steam Engineers, Chief Inspector of Steam Boilers, Board of Boiler Rules and State Board of Arbitration and Conciliation.

The Industrial Commission Act abolished all of the above named departments and all of them ceased to have a legal existence on and after September 1, 1913, and thereafter all of the duties theretofore performed by them are performed by The Industrial Commission of Ohio, as provided in Sections 12 and 24 of The Industrial Commission Act, which are as follows:

> Sec. 12. "The industrial commission shall supersede and perform all of the duties of the state liability board of awards, provided in and by the act of the general assembly of the state of Ohio passed the thirty-first day of May, 1911 (102 O. L., 524) entitled, 'An act to create a state insurance fund for the benefit of injured and the dependents of killed employes and to provide for the administration of such fund by a state liability board of awards', and all amendments to said act, and by the act of the general assembly passed February 26, 1913, approved March 14, 1913, and filed in the office of the secretary of state March 17, 1913, entitled, 'An act to further define the powers, duties and jurisdiction of the state liability board of awards with reference to the collection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employes and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58, 1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78, 1465-79 of the General Code, on and after the first day of September, 1913; and said

commission on and after the first day of September, 1913, as successor of said liability board of awards, shall be vested with and assume and exercise all powers and duties cast by law upon said liability board of awards, and on the first day of September, 1913, the term of office of the members constituting the said state liability board of awards of Ohio shall cease and terminate together with all rights, privileges and emoluments connected therewith."

Sec. 24. "All duties, liabilities, authority, powers and privileges conferred and imposed by law upon the commissioner of labor statistics, special agents of the commissioner of labor statistics, chief inspector of mines, district inspectors of mines, chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspectors of workshops and factories, chief examiner of steam engineers, assistant chief examiner of steam engineers, district examiners of steam engineers, the board of boiler rules, head of the department of the board of boiler rules and chief inspector of steam boilers, assistant chief inspector of steam boilers, general inspectors of steam boilers, special inspector of steam boilers, state board of arbitration and conciliation, are hereby imposed upon the industrial commission of Ohio, and its deputies on and after the first day of September, 1913.

All laws relating to the commissioner of labor statistics, special agents of the commissioner of labor statistics, chief inspector of mines, district inspectors of mines, chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspectors of workshops and factories, chief examiner of workshops and factories, chief examiner of steam engineers, assistant chief examiner of steam engineers, district examiners of steam engineers, the board of boiler rules, head of the department of the board of boiler rules and chief inspector of steam boilers, assistant chief inspector of steam boilers, general inspectors of steam boilers, special inspectors of steam boilers, state board of arbitration and conciliation, on and after the first day of September, 1913, shall apply to, relate and refer to the industrial commission of Ohio, and its deputies. Qualifications prescribed by law for said officers and their assistants and employees shall be held to apply, wherever applicable, to the qualifications of the deputies of the commission assigned to the performance of the duties now cast upon such officers, assistants and employees."

All communications of any kind relating to any subject formerly administered by any of the old departments hereinbefore enumerated should be addressed to The Industrial Commission of Ohio and on its receipt it will be referred to the proper division for attention. For convenience the work of the commission has been subdivided into departments and divisions as follows:

1. Department of Claims,
   a. Division of Examination.
   b. Medical Division.
2. Department of Inspection,
   a. Division of Workshops and Factories.
   b. Division of Boiler Inspection.
   c. Division of Steam Engineers.
   d. Division of Mines.
3. Department of Accounts,
   a. Division of Payroll Audit.
   b. Division of Appropriations and Expenditures.

c. Division of State Insurance Fund—Premiums.
d. Division of State Insurance Fund—Awards.
e. Division of Collections.
4. Department of Investigation and Statistics.
5. Department of Film Censorship.

An Open Letter

2,884 employers have elected to adopt the state plan of insurance by paying premiums into the state insurance fund. Measured by character and business importance the average is high. These employers are immensely satisfied with the state plan. They have satisfied their legal and moral obligations, have purchased for themselves exemption from liability at law, and have purchased, also for their employes who suffer the misfortune of accident, the most generous compensation afforded in the entire country. Most of them who have been subscribers for a considerable length of time have experienced the beneficial results of a system guaranteed to furnish insurance at cost. Twice have the rates been reduced and once has there been a distribution (refund) of excess premium payments in an amount reaching $50,000. They feel the full force of the statement we are justified in making, that workmen's compensation insurance in Ohio under the state plan is not a question of added burden to the industries of the state, even in dollars and cents, but instead is purely a question of distribution with the expectable result that the state plan will not only cost less but will actually result in a positive diminution in the number of accidents.

Bearing this in mind we call attention to the employers of Ohio who have already filed application for classification and rating, but who have not yet adopted the state plan, that there is being mailed to each a revised rating of each risk with a pay-in-order authorizing that payment be made at once into the state insurance fund.

This payment should be made promptly for several reasons. It immediately puts an employer and his employes under the best known system of compensation insurance and a system which is bound to obtain universally throughout the country; and it relieves both the employer and The Industrial Commission from the stress which is bound to obtain on January 1 next when the law becomes compulsory and when it no longer lies within the option of an employer to adopt or not to adopt the state plan. It also gives ample opportunity for an employer before that time to become thoroughly familiar with the working of the state plan, for upon request a representative of this department may be summoned to assist in inaugurating the new plan. It relieves the employer also of the tremendous legal liability incurred in continuing to operate under a law which not only deprives him of the common law defenses if he fails or refuses to adopt the state plan, but also makes him responsible if he is guilty in the slightest degree of any wrongful act, neglect or default as a result of which an injury is sustained by one of his workmen.

To hesitate or to delay is unwise.

We therefore urge immediate action.

Yours truly,
THE INDUSTRIAL COMMISSION
OF OHIO.

Schooling Certificates and the Employment of Minors.

The position of The Industrial Commission with reference to the law governing the employment of minors and involving the question of schooling certificates is as follows:

1. Employment of boys under 15 or girls under 16 years of age is prohibited by law on and after Aug. 12, 1913, *unless such boys or girls were lawfully employed prior to such date, in*

which event they may continue in the employment in which they were so lawfully engaged prior to said date.

2. Schooling certificates issued in conformity with the law as it existed prior to Aug. 12, 1913, authorize the continuance in their employment after Aug. 12, 1913, by such boys and girls to whom such certificates were so issued.

3. On and after Aug. 12, 1913, boys under 16 years of age cannot be lawfully employed unless upon furnishing the employer with an age and schooling certificate signed by the superintendent of schools showing such boys to have passed a satisfactory sixth grade test.

4. On and after Aug. 12, 1913, girls under 18 years of age cannot be lawfully employed unless upon furnishing their employer with an age and schooling certificate signed by the superintendent of schools showing such girls to have passed a satisfactory seventh grade test.

In other words, the construction placed upon the law as it now stands is such as to authorize the continuance in employment of all boys and girls employed prior to Aug. 12, 1913, under proper age and schooling certificates issued prior thereto, but all contracts of employment entered into with minors subsequent to such date are subject to the provisions of the new law which prohibits the employment of boys under 16 and girls under 18 without such age and schooling certificates.

Prior to Sept. 1, 1913, it was the duty of the chief inspector of workshops and factories and truant officers generally to make prosecutions for the violation of the child labor laws.

Since Sept. 1, 1913, the duty of making such prosecutions devolves upon The Industrial Commission of Ohio as well as upon truant officers.

FACTS

ABOUT

WORKMEN'S COMPENSATION INSURANCE

Employers under state plan, 2,884.

Grand total premium recipts, $871,683.90.

Awards granted, about $400,000, $219,160.98 of which has already been paid in cash.

Balance in treasury, $673,772.25, which is drawing interest at from 2.67% to 4.80%.

Annual payroll covered, $177,157,720.

Number of employes protected, 181,366.

Number paid and adjusted, 12,700.

Average award, under $30.00.

Margin of safety under present rates, 30 cents in each dollar.

Expense ratio less than 15%.